Supreme Court, U.S.
FILED
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No.

IN THE

Supreme Court of the United States

STUART KORTEBEIN, et al.
Petitioners

v.

AMERICAN MUTUAL LIFE INSURANCE CO. now known as
AMERUS LIFE INSURANCE CO.
Respondent

On Petition For A Writ Of Certiorari
To The Texas Court of Appeals, Third District, at Austin

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Petitioners were members of a class of persons and entities who complained, among other things, that AmerUs Life Insurance Co. made misrepresentations about vanishing premium whole life insurance policies. After the class action, which was pending in the 98th District Court of Travis County, Texas, settled and a judgment was rendered, Petitioners filed suit in state court in Illinois attacking the judgment, complaining that they were not adequately represented by class counsel. The Texas court enjoined Petitioners from proceeding with the Illinois action after AmerUs argued that Petitioners are bound by and cannot collaterally attack the judgment rendered by the Texas court.

Can Petitioners collaterally attack the class action judgment based upon a claim that they were not afforded their due process right to adequate representation by the class representative?

If Petitioners can collaterally attack the class action judgment based upon a claim that they were not afforded their due process right to adequate representation by the class representative, can they do so in a forum of their choosing?

PARTIES TO THE PROCEEDING

Petitioners are Stuart Kortebein, Antimo Candel, Ronald Peters, Thaddeus Pierce, Melvyn Romanoff, Fedor Bachman, William Baiunger, Charles Rhodes, Robert Babbin, Burton Eisenberg, Jeannette Page, David Rozen, Richard Hirschtritt, John Hoff, Martin Blumburg, Charles Earle, Albert Furman, Albert Furman Trust, Hubbanrd Page, Gerald Kandel, Max Rabin, Ian Haskell, Sharon Haskell, Saul Haskell, Marc Engelhart, Linda Weber, Harry Weber, Kevin Earle, Michael Tan, Steven Kroll, Keith Boyer, Robert Bussell, Donald Silvertrust, Howard Weitzman, Lewis Natenshon, Larry Goldsmith, Mitchell Nagorsky, Paul Adelman, Jacquelyn Scott, Vanessa Ehrlich, Sandford Gail, Mahammad Farooqui, Michael Hyman, and Barry Millman.

Respondent is AmerUs Life Insurance Company.

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Petitioners respectfully petition for a writ of certiorari to review the judgment of the Texas Court of Appeals, Third District, at Austin in this case.

OPINION BELOW

The opinion of the Texas Court of Appeals, Third District, at Austin (App. A) is reported at *Kortebein v. American Mutual Life Insurance Co.*, 49 S.W.3d 79 (Tex. App.—Austin 2001, pet. denied).

STATEMENT OF JURISDICTION

The judgment of the Austin Court of Appeals was rendered on May 10, 2001. The Supreme Court of Texas denied Petitioners' petition for review on August 23, 2001. (App. B).

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

This case involves the due process rights afforded under the Fourteenth Amendment to the United States Constitution, which provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to

any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On August 31, 1995, Bruce and Wendy Cozad filed a class action against AmerUs complaining that misrepresentations were made about whole life insurance policies purchased from AmerUs, including the representation that after a certain number of premiums were paid, no more premiums would be due (a "vanishing premium"). The members of the class, which included Petitioners, were policyholders throughout the United States. None of the Petitioners were the class representatives.

On May 23, 1997, the Cozads and AmerUs entered into a Settlement Agreement, which released all of the class members' claims against AmerUs and gave the class members the option of seeking basic relief (reduced rate policy loans, new policy contributions, and new annuity contributions) or special relief (App. C). In order to obtain special relief, a class member had to submit to a claim process whereby the class member would submit documentation to AmerUs supporting the misrepresentation claim. AmerUs would decide the merits of these claims, with an appeal solely to an "Independent Arbiter" selected by AmerUs and the class representatives. If special relief were sought, and denied, the class member could not obtain basic relief, nor did he or she have any further appeal.

On September 16, 1997, the Texas court approved the settlement and rendered a final judgment in the class action (App. D). This judgment incorporated the settlement agreement, which provided that the court would have exclusive jurisdiction over and venue of any actions relating

to the settlement agreement. The judgment itself provides that the court retains jurisdiction over the settlement. The judgment, like the settlement agreement, also provides that the class members released all their claims against AmerUs relating to the vanishing premium whole life insurance policies. As members of a nationwide class, Petitioners did not have any input into the terms of the settlement agreement. Instead, counsel for the class representatives and AmerUs "worked closely together in drafting, negotiating, and reviewing this Settlement Agreement."

After the final judgment was rendered, Petitioners applied for, but were denied, special relief even though the terms of their policies had been misrepresented to them. Subsequently, Petitioners jointly filed a lawsuit in Cook County, Illinois, seeking to pursue their individual claims against AmerUs concerning the alleged misrepresentations that were made to induce them into purchasing the vanishing premium life insurance from AmerUs. By that suit, Petitioners sought to avoid the class action judgment, claiming that their constitutional due process rights were violated because of inadequate representation by the class representatives that created a claim procedure that was designed to provide no relief at all (App. E).

In response to the Illinois suit, AmerUs filed a Motion to Enforce Judgment in the Texas court, asking the trial court to enjoin Petitioners from proceeding with the Illinois lawsuit, claiming that Petitioners are bound by and cannot collaterally attack the judgment rendered by the Texas court in the class action proceeding. Petitioners responded, subject to their special appearance, arguing that the Texas court had no jurisdiction over them and thus, no power to determine the merits of their contention that they were not afforded the due process protection of adequate representation in the class action. The Texas court granted

AmerUs' motion and enjoined Petitioners, thereby denying, by implication, Petitioners' special appearance. The Austin court of appeals affirmed, concluding that Petitioners' due process rights had not been infringed upon because they had been adequately represented by class counsel. *Kortebein v. American Mutual Life Insurance Co.*, 49 S.W.3d 79 (Tex. App.—Austin 2001, pet. denied). The Texas supreme court, on August 23, 2001, denied Petitioners' petition for review.

REASONS FOR GRANTING THE WRIT

I. A collateral attack upon a class action judgment is necessary to protect the constitutionality of the class action procedure.

II. The Texas courts denied Petitioners the opportunity to adjudicate their claim under the Fourteenth Amendment to the United States Constitution that they were not adequately represented in the class action proceeding.

III. The judgment of the Austin Court of Appeals is in conflict with the decision in *In re Real Estate Title and Settlement Services Antitrust Litigation*, 869 F.2d 760 (3d Cir.), *cert. denied*, 493 U.S. 821 (1989).

For the class action judgment to be binding on Petitioners, none of whom are Texas residents, the Texas court had to have personal jurisdiction over them. A Texas court can exercise personal jurisdiction over a nonresident if: (1) the Texas long-arm statute authorizes the exercise of jurisdiction, and (2) the exercise of jurisdiction comports with state and federal constitutional guarantees of due process. *Schlobohm v. Schapiro*, 784 S.W.2d 355, 356 (Tex. 1990); *see also* U.S. CONST. amend. XIV; TEX. CONST. art. I, § 19; TEX. CIV. PRAC. & REM. CODE § 17.042.

Typically, the issue of personal jurisdiction focuses on a nonresident defendant, requiring that defendant to purposely establish minimum contacts with the forum state before personal jurisdiction can be exercised over him or her. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985). However, as this Court has held, the Fourteenth Amendment protects "persons", not "defendants" and thus, Petitioners were entitled to due process protections from the Texas court that sought to adjudicate their claims. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811 (1985).

One such protection is that the absent members must be adequately represented at all times by the class representative. *Hansberry v. Lee*, 311 U.S. 32, 42- 43 (1940). In *Hansberry*, several class members argued that they were not bound by a class action judgment because they were not parties to the lawsuit. The Court held that the general rule requiring a person to be a party to litigation before a judgment would be binding on that person does not apply to the members of a class so long as parties who are present adequately represent those absent members. *See also Sam Fox Publishing Co., Inc. v. United States*, 366 U.S. 683, 691 (1961) ("the judgment in a class action will bind only those members of the class whose interests have been adequately represented by existing parties to the litigation").

This Court in both *Shutts* and *Hansberry* held that the consequence of not providing the due process protections to the absent class members is that the judgment rendered in the class action suit will not be binding on them. *Shutts*, 472 U.S. at 811; *Hansberry*, 311 U.S. at 42-43. However, the Court did not directly address in these cases, nor any other case, the issue of whether absent class members can collaterally attack a class action judgment based on claimed

due process violations.[1] As a result, the resolution of this issue has been left to lower courts, with conflicting results.

The approach more consistent with protecting the due process rights of absent class members is exemplified by the Third Circuit which, relied on *Shutts* and *Hansberry* to hold that class members who have not been afforded adequate due process protections can collaterally attack the class action judgment in the forum of their choosing. *In re Real Estate Title and Settlement Services Antitrust Litigation*, 869 F.2d 760, 767-769 (3d Cir.), *cert. denied*, 493 U.S. 821 (1989).

The facts of *In re Real Estate* are very similar to the facts in this case. *In re Real Estate* grew out a class action filed in a Pennsylvania federal court against several title insurance companies. After the class action settled, the attorney general of Arizona (representing two Arizona school boards that were members of the class) filed suit in Arizona state court against the title insurers alleging the same claims that were the subject of the class action. The title insurers convinced the Pennsylvania federal court to enjoin the Arizona action, just as the trial court did in this case, and the Arizona school boards appealed, claiming they were not bound by the class action judgment because they were not afforded the due process protections of the opportunity to opt out and adequate representation. *In re Real Estate*, 869 F.2d at 765.

The Third Circuit reversed the injunction, holding that, in light of *Hansberry* and *Shutts*, the consequence of not providing due process protections to the absent class members is that the judgment rendered in the class action

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[1] While *Hansberry* was a collateral attack, the issue of whether a collateral attack is permissible was not raised by the parties and not addressed by the Court.

suit is not binding on those members. *In re Real Estate*, 869 F.2d at 767-69. Significantly, the Third Circuit reversed the injunction, not because it determined that due process protections had not been given to the absent class members, but simply because that was what the absent class members were alleging. Indeed, the Third Circuit allowed the school boards to collaterally attack the class action judgment.

Not only did the Third Circuit permit a collateral attack upon the class action judgment, it held that the class members' due process claim could be brought in the forum of their choosing, holding as follows:

> Thus, the class members in *Shutts* still possessed their right to attack the class action judgment collaterally, presumably in the forum of their choice, alleging that the representative plaintiff did not represent them adequately.
>
> . . .
>
> It will be for the Arizona court to determine the merits of the due process contentions. If that court finds that the school boards were accorded due process in the class action proceeding, then the state court suit will be prohibited by the terms of the settlement.
>
> *In re Real Estate*, 869 F.2d at 767, 769.

The Third Circuit saw no danger to the class action system by allowing collateral attacks in other forums, holding:

> Ever since *Hansberry v. Lee* was decided in 1940, collateral attacks have been considered to be a necessary part of the class action scheme. Rather than threatening the vitality

> of the class action mechanism, the fact that some plaintiffs will be able to extricate themselves from class action judgments if subsequent courts find them to be inadequately represented is integral to the constitutionality of the class action procedure.
>
> *In re Real Estate*, 869 F.2d at 769.

The Third Circuit is not the only court to permit a collateral attack upon a class action judgment based on an allegation that the absent class members were not adequately represented by class counsel. The Ninth Circuit permitted the same when numerous Arizona and Wisconsin consumers filed their own class action in Arizona federal court after the same Pennsylvania class action that was the subject of *In re Real Estate* was settled. *Brown v. Ticor Title Insurance Co.*, 982 F.2d 386, 392 (9th Cir. 1992); *cert. dismissed as improvidently granted*, 511 U.S. 117 (1994).

In *Brown*, rather than trying to enjoin the consumers, the insurers instead argued the consumers were bound by the Pennsylvania class action judgment and their claims were barred by res judicata. On appeal of a summary judgment in favor of the insurers, the consumers argued they were not bound by the Pennsylvania class action judgment because they were not afforded the due process protections of adequate representation and the opportunity to opt out. *Brown*, 982 F.2d at 390, 392. The Ninth Circuit reversed and remanded because the Pennsylvania court had not given the consumers the opportunity to opt out of the class action, but it found that the consumers had not provided any evidence of inadequate representation. *Brown*, 982 F.2d at 391, 392. Thus, the court permitted the

absent class members to collaterally attack the class action judgment in the forum of their choosing.

This principle is also implicit in *Gonzales v. Cassidy*, 474 F.2d 67 (5th Cir. 1973), as the court permitted absent class members to collaterally attack a class action judgment based on a contention that the class representative did not adequately represent them. The class action was filed in the district court for the Western District of Texas while the second suit was filed in the district court for the Northern District of Texas. The Fifth Circuit reversed the Northern District Court's summary judgment based on res judicata, holding that the absent members were not bound by the first judgment because the class representative did not, at all times, adequately represent them. *Gonzales v. Cassidy*, 474 F.2d at 74.

The Austin court of appeals found *In re Real Estate* inapplicable, claiming that the Third Circuit permitted a collateral attack only because the Arizona school boards were not given the opportunity to opt out of the class action settlement. *Kortebein*, 49 S.W.3d at 87. Even if this were true, and it is not, the Austin court's reasoning is seriously flawed as it gives more importance to one due process protection over another when all such protections are of equal importance. Consequently, if any of the due process protections are not afforded to absent class members, then the class action judgment is not binding on them. Moreover, the Arizona school boards, similar to Petitioners, also asserted that the class representatives "sold them out by agreeing to a settlement that included no direct monetary relief." *In re Real Estate*, 869 F.2d at 765, n.2.

Similarly, Petitioners should be permitted to adjudicate their due process claim in the Illinois court – a court that clearly has jurisdiction over them. If that court determines

that Petitioners were adequately represented in the class action, then the judgment is binding on them. If, however, the Illinois court determines that Petitioners were not adequately represented, then they can continue to proceed with their claims against AmerUs in a forum that has jurisdiction over them. Allowing the Texas court to adjudicate Petitioners' due process claim can lead to only one conclusion: that they were adequately represented. A contrary decision would have no binding authority since the consequence of such a decision would be that the Texas court has no jurisdiction over Petitioners.

In contrast to the Third, Fifth and Ninth Circuit's opinion in *Brown*, the Ninth Circuit, in dicta, in *Epstein v. MCA, Inc.*, 179 F.3d 641 (9th Cir. 1999), stated that collateral attacks upon class action judgments are not permissible, even when raising due process claims. *Epstein* was the opinion on remand after this Court decided *Matsushita Electric Industrial Co., Ltd. v. Epstein*, 516 U.S. 367 (1996).

After Matsushita acquired the stock of MCA in a tender offer, the holders of MCA's common stock filed a class action in Delaware state court, alleging state law claims against MCA and Matsushita. While that class action was pending, the shareholders brought suit in a California federal court against Matsushita alleging a federal claim under the Securities Exchange Act. The federal district court declined to certify a class and rendered summary judgment for Matsushita. While the federal action was on appeal at the Ninth Circuit, the Delaware class action was settled and all federal law claims in addition to the state law claims were released. Matsushita then argued to the Ninth Circuit that it must give full faith and credit to the Delaware judgment and dismiss the appeal. The Ninth Circuit held that the Full Faith and Credit Act, 28 U.S.C. § 1738, did not apply.

This Court granted certiorari and addressed one issue: whether a federal court may withhold full faith and credit from a state court judgment approving a class action settlement simply because the settlement releases claims within the exclusive jurisdiction of the federal courts. *Matsushita*, 516 U.S. at 369. In resolving this issue, the Court considered whether Delaware law would give preclusive effect to the judgment, *Matsushita*, 516 U.S. at 375, not whether due process protections were afforded the absent class members. Indeed, the Court specifically declined to address the due process claim, "because it is outside the scope of the question presented in this Court." *Matsushita*, 516 U.S. at 379, n. 5.

Even though this Court stated it was not addressing the due process claim, the majority of the Ninth Circuit, on remand, refused to consider the merits of this argument, claiming that this Court had concluded that the Delaware judgment did not violate due process. *Epstein v. MCA, Inc.*, 179 F.3d 641, 644-45 (9th Cir. 1999). Judge Thomas dissented on this issue because this Court had specifically stated that it had not addressed the due process issue since it was not a basis for the Ninth Circuit's decision that it was reviewing. *Epstein*, 179 F.3d at 651-52 (Thomas, J., dissenting).[2]

Even though the Ninth Circuit majority refused to consider the merits of the due process claim, it stated in

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[2] Judge Thomas further cited Justice Ginsburg's partial concurrence in *Matsushita*, that, "Although the Ninth Circuit decided the case without reaching the due process check on the full faith and credit obligation, that inquiry remains open for consideration on remand." *Epstein*, 179 F.3d at 651-52 (Thomas, J., dissenting), quoting *Matsushita*, 516 U.S. at 389.

dicta that due process, while it requires that the absent class members be adequately represented "does not require collateral second-guessing of those determinations and that review." *Epstein*, 179 F.3d at 648. The Ninth Circuit seemingly relied upon *Hansberry v. Lee*, 311 U.S. 32 (1940) for this conclusion, which is surprising since *Hansberry v. Lee* was a successful collateral attack upon a class action judgment.

The Ninth Circuit majority also cited as support for its conclusion *Grimes v. Vitalink Communications Corp.*, 17 F.3d 1553 (3rd Cir. 1994) and *Nottingham Partners v. Trans-Lux Corp.*, 925 F.2d 29 (1st Cir. 1991). Neither case, however, is applicable to the facts of this case. In both cases, class members were not allowed to collaterally attack a class action judgment because the basis for the attack (inadequate representation in *Grimes* and unfair settlement terms in *Nottingham Partners*) had been raised by the class members in the class action suit and resolved against them not only by the trial court but also by courts of appeals. *Grimes*, 17 F.3d at 1558; *Nottingham Partners*, 925 F.2d at 31. Petitioners, of course, did not raise inadequate representation in the class action lawsuit nor has this issue been resolved against them.

IV. The Questions presented are Important

While this Court has held that absent class members are entitled to certain due process protections before a class action judgment will be binding on them, the Court has yet to directly address whether the absent class members can assert their due process rights in a collateral attack to the class action judgment and whether can they do so in a forum of their choosing that has jurisdiction over them. Thus, there are mixed results among state and federal courts. With this case, the Court has the opportunity to

definitively resolve these issues that can affect potentially millions of litigants involved in class actions throughout our nation.

CONCLUSION

The due process requirements of the Fourteenth Amendment demand that Petitioners be afforded adequate representation by the class representatives in the settlement of the class action suit against AmerUs. The Court should permit absent class members to challenge by collateral attack a class action judgment based upon claims that their due process rights were violated in order to maintain the constitutionality of the class action procedure.

The Texas courts, however, denied Petitioners the right to raise and adjudicate their claim that they were not afforded this constitutional protection by enjoining them from prosecuting their suit in Illinois. Such trampling upon Petitioners' constitutional rights can now only be remedied by this Court's reversal of the injunction.

Accordingly, Petitioners, for the reasons set forth above, respectfully request that the Court grant this petition for writ of certiorari.

Respectfully submitted,

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Respondent

On Petition For A Writ Of Certiorari To The Texas Court of Appeals, Third District, at Austin

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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Appendix A

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49 S.W.3d 79
(Cite as: 49 S.W.3d 79)

Court of Appeals of Texas,
Austin.

Stuart KORTEBEIN, Atimo Candel, Ronald Peters, Thaddeus Pierce, Melvyn Romanoff, Fedor Bachman, William Baitinger, Charles Rhodes, Robert Babbin, Burton Eisenberg, Jeannette Page, David Rozen, Richard Hirschtritt, John Hoff, Martin Blumburt, et al., Appellants,

v.

AMERICAN MUTUAL LIFE INSURANCE COMPANY, now known as AmerUs Life Insurance Company, Appellee.

No. 03-00-00591-CV.

May 10, 2001.

After settlement of class action against insurance company, in which policyholders alleged that company misrepresented premiums for policies, class members brought action to challenge judgment in another state, and company filed motion to enforce judgment and for injunction preventing class members from proceeding with challenge. The 98th Judicial District Court, Travis County, John K. Dietz, J., denied class members' special appearance and granted permanent injunction. Class members appealed. The Court of Appeals, Bea Ann Smith, J., held that: (1) minimal due process requirements, including minimum contacts and consent, were provided to class members, and thus class action judgment was binding on class members and denial of special appearance to challenge judgment was not against great weight and preponderance

of evidence; (2) class members' participation in settlement subjected them to exclusive jurisdiction in Texas, and thus, class members could not collaterally challenge judgment in another state; and (3) class members could not successfully challenge adequacy of representation.

Affirmed.

West Headnotes

[1] Appeal and Error k1010.1(8.1)
30k1010.1(8.1)

When in personam jurisdiction is challenged, an appellate court will review all the evidence for factual sufficiency.

[2] Appeal and Error k1012.1(7.1)
30k1012.1(7.1)

Appellate court may reverse a decision of the district court as to existence of in personam jurisdiction only if its ruling is so against the great weight and preponderance of the evidence as to be manifestly erroneous or unjust.

[3] Constitutional Law k315
92k315

[3] Judgment k677
228k677

Minimal due process requirements, including minimum contacts and consent, were provided to class member, and thus class action judgment against insurance company, which settled claims arising out of alleged misrepresentation of premiums for life insurance policies, was binding on class member and denial of special appearance to challenge judgment was not against great

weight and preponderance of evidence, where class representatives adequately represented absent class member, class member was apprised of findings, notice gave class member opportunity to either exclude himself or to object, class member was notified that failure to opt out released and waived all claims and that pursuing special relief forfeited right to seek basic relief, and class member did not opt out and participated in arbitration procedures after claim review team denied special relief. U.S.C.A. Const.Amend. 14.

[4] Judgment k489
228k489

Class member's participation in settlement subjected him to exclusive jurisdiction in Texas, by establishing necessary minimum contacts with Texas and consent to jurisdiction in Texas, and thus, class member could not collaterally challenge judgment in class action against insurance company in another state, where class member was given opportunity to opt out of class, but chose not to exercise that option, class member had notice that failure to opt out would waive current and future claims he might have against company, that participation in procedure seeking special relief waived any right to basic relief, and that any actions arising out of settlement process were subject to exclusive jurisdiction of Texas court, and despite notice, participated in class action and settlement process. U.S.C.A. Const.Amend. 14.

[5] Judgment k518
228k518

"Collateral attack" is an attempt to avoid the effect of a judgment in a proceeding brought for some other purpose.

[6] Judgment k335(1)
228k335(1)

"Direct attack" on a judgment is an attempt to change that judgment in a proceeding brought for that specific purpose, such as an appeal or a bill of review.

[7] Judgment k489
228k489

Grounds upon which a collateral attack may be successful are that the court rendering judgment has: (1) no jurisdiction of the person of a party, or his property, (2) no jurisdiction of the subject matter of the suit, (3) no jurisdiction to enter the particular judgment entered, or (4) no capacity to act as a court.

[8] Judgment k489
228k489

Judgment adjudicating the claims of a person over whom the court had no jurisdiction is void and thus, subject to collateral attack.

[9] Judgment k489
228k489

Record must affirmatively show that a court's jurisdiction did not attach in a particular case, for a successful collateral attack.

[10] Judgment k506
228k506

Even if class member, who sought to challenge class action judgment against insurance company on claims of misrepresentation of premiums for policies, could

collaterally attack judgment based solely on allegations of inadequate representation, attack would be unsuccessful, where district court twice determined that the class representatives provided adequate representation to absent class members, class member failed to appeal those findings or file bill of review, class member voluntarily participated in settlement process, and when class member initially sued insurance company in Illinois, he did not assert inadequate representation.

[11] Parties k35.1
287k35.1

In general, the certifying court is charged with protecting the interests of absent class members.

[12] Constitutional Law k309(1.5)
92k309(1.5)

Absent class members' due-process right to adequate representation is protected by the adoption of appropriate procedures by the certifying court and by appeal within the state system and by direct review in the United States Supreme Court; due process does not require collateral second-guessing of those determinations and that review. U.S.C.A. Const.Amend. 14.

[13] Judgment k855(1)
228k855(1)

Every court with jurisdiction to render a judgment has the inherent power to enforce its judgments.

[14] Courts k480(1)
106k480(1)

[14] Judgment k855(1)
228k855(1)

Court may exercise inherent power to enforce its judgments by any suitable method, which includes the issuance of a writ of injunction on proceeding in another court with a suit that would delay, obstruct, or interfere with the proper enforcement of a judgment.

*81 Tim Labadie, Austin, for appellant.
Douglas D. Dodds, McGinnis, Lochridge & Kilgore, L.L.P., Austin, for appellee.

Before Justices KIDD, B.A. SMITH and PURYEAR.

BEA ANN SMITH, Justice.

Stuart Kortebein and forty-four other *82 Illinois residents [FN1] were among more than 130,000 plaintiffs in a nationwide class-action suit filed in Texas against American Mutual Life Insurance Company, now known as AmerUs Life Insurance Company (AmerUs), which resulted in a court-approved settlement. Kortebein did not opt out of the class action and participated in the settlement process; later, however, Kortebein sued AmerUs in Illinois asserting the same claims at issue in the Texas class action and claiming that the settlement was fraudulent. AmerUs asked the Texas district court to enforce its judgment by enjoining the Illinois residents from proceeding with the Illinois suit. Kortebein responded by challenging the district court's jurisdiction through a special appearance and arguing against AmerUs's request for the injunction. The district court denied Kortebein's special appearance and permanently enjoined the Illinois residents from proceeding with the suit against AmerUs in Illinois. Kortebein appeals that order, asserting that the district court erred in denying

the special appearance because that court lacked personal jurisdiction over the Illinois residents, and that Kortebein is permitted by law to collaterally attack the class-action judgment in a forum of his choosing. We affirm the judgment of the district court.

FN1. For ease of reference, we will refer to appellants collectively as Kortebein, or when appropriate, as the Illinois residents.

FACTS

In 1995 Bruce and Wendy Cozad filed a class-action lawsuit in Travis County district court against AmerUs. The focus of the lawsuit, styled Cozad v. American Mutual Life Insurance Company (the Cozad class action), involved sales of "vanishing premium" whole life insurance policies by AmerUs. [FN2] The Cozads and Merle and Joann Baker, who later joined the Cozads as class representatives, sought to represent a nationwide class composed of certain holders of insurance policies issued by AmerUs or by Central Life Assurance Company. The Cozads, Bakers, and AmerUs agreed to a settlement and asked the district court for preliminary certification of the class and approval of the settlement agreement. The plaintiffs sought to have the class certified pursuant to Texas Rule of Civil Procedure 42(b)(4), which enables class members to request exclusion from the class. See Tex.R. Civ. P. 42(b)(4).

FN2. A vanishing premium policy is one in which the holder pays premiums out-of-pocket for a limited period of time; thereafter, premiums are paid using the policy dividends and other policy values, and the policyowner's out-of-pocket premium obligations "vanish." The policy is distinguishable from policies where the holder pays premiums until he or she reaches 65 years of age or for the life of the policy. According to the class-action plaintiffs, AmerUs misrepresented that after a certain number of premium payments, the policies would be fully funded, with no further obligation to pay additional premiums; the policies would, effectively, "pay for themselves." The classaction plaintiffs alleged that, contrary to AmerUs's representations,

policyholders were expected to make additional premium payments to keep the policies in effect. Plaintiffs maintained that AmerUs failed to disclose information that would have alerted them to the possibility that additional premiums would be required. Plaintiffs alleged breach of contract, negligence, fraud, negligent misrepresentation, unjust enrichment, violations of the Deceptive Trade Practices Act and Texas Insurance Code, breach of fiduciary duty, and constructive fraud.

On June 10, 1997, the district court provisionally certified the class and ordered the class representatives to notify the class members of the settlement. The Cozad order contained a finding by the district court that the class representatives had produced evidence that they would fairly and adequately protect the interests of the class. The district court also stated that *83 the class representatives had produced evidence that showed that the settlement agreement was "negotiated at arm's length by experienced counsel; that substantial discovery and investigation have been conducted by Plaintiffs ... that the settlement agreement is fair, adequate and reasonable, confers substantial benefits on the Class Members, and is in the best interests of the class."

In addition, the Cozad order defined several procedures that would be available to class members, namely, the right to opt out or to object to certification and to the settlement. The court-approved notice included extensive information regarding this relief. The notice alerted class members that they had the right to opt out of the settlement class and that failure to do so would release and waive all present and future claims they might have against AmerUs. The notice also advised class members of the proposed settlement. Kortebein received this notice and did not opt out of the class.

On September 16, 1997, the district court signed a final judgment that both certified the class and approved the settlement agreement between the class and AmerUs. The

district court entered findings that stated, "Plaintiffs ... have and will fairly and adequately protect and represent the interests of the class." The district court ordered AmerUs to mail a notice of approval of the settlement and opportunity for relief to all class members who had not opted out.

This second court-approved notice contained information regarding the terms of the settlement, which established a two-tiered system of basic relief and special relief. To qualify for special relief, any class member could submit a claim that an AmerUs agent or representative made certain material misrepresentations. The claim process required a claimant to complete a request and a proof of claim. A claim review team would review the file and assign each claim to a level of special relief or decide that the policy did not qualify for such relief. A claimant whose policy did not qualify for special relief could submit the claim to an independent arbiter, whose decision was binding and not subject to appeal "for any reason or to any forum." A class member who pursued a claim for special relief forfeited the right to seek basic relief. Class members who did not submit a policy to the claim process could obtain basic relief. In addition, the settlement provided that the Texas district court would have exclusive jurisdiction over and venue of all claims related to or arising from the settlement.

Kortebein elected to forego basic relief by submitting claims for special relief. The review team denied his claims. Kortebein then participated in the arbitration procedure; the independent arbiter also denied the claims, stating that they did not meet the criteria for special relief. Kortebein subsequently filed suit in the circuit court in Cook County, Illinois, alleging that the notice of the proposed settlement in the Cozad class action was misleading as to the particular requirements necessary to qualify for special relief. Kortebein requested that the Illinois court allow him to

rescind his participation in the Cozad class action and be allowed to pursue his claims individually, or in the alternative, that he be awarded the special relief he applied for under the Cozad settlement agreement. He also requested compensatory and punitive damages against AmerUs.

Kortebein attempted to file a second-amended complaint to add an allegation that the class representatives in Cozad failed to adequately protect his interests; however, the Illinois court never granted leave to file that complaint and subsequently dismissed the action. Kortebein *84 attached the complaint to his brief in support of his special appearance filed in the Texas district court. In it, he argued that he relied on the fact that the class representatives had the duty to adequately represent the class members at all times. According to the complaint, Kortebein opted to pursue special relief in reliance both on the Cozads' duty and on the representations in the notice, thereby forfeiting his right to basic relief.

In response to Kortebein's suit in Illinois, AmerUs filed a motion to enforce the class-action judgment in the Texas district court and asked that court to enjoin Kortebein from taking any action relating to the subject matter of the final judgment in Cozad, except as provided in the judgment in the Texas court. AmerUs contended that Kortebein was a member of the Cozad class action, received notice of the proposed settlement, and elected not to opt out of the class. Further, Kortebein elected to submit claims for special relief, all of which were denied by the review team and by the independent arbiter. AmerUs asserted that Kortebein should have filed a bill of review with the district court, as he was alleging that the judgment was obtained by fraud. [FN3] AmerUs claimed that Kortebein instead made a collateral attack on the judgment despite having

participated in the settlement whereby he released all claims against AmerUs, and despite having agreed to the exclusive jurisdiction of the Texas district court. Finally, AmerUs argued that Kortebein's lawsuit in Illinois constituted interference with the Cozad class- action judgment, thus making it necessary for the district court to exercise its inherent power to enforce its judgment by enjoining the suit in Illinois.

FN3. *See Browning v. Placke*, 698 S.W.2d 362, 363 (Tex.1985) (filing bill of review in district court is appropriate avenue to attack judgment as void when time for direct attack by appeal has elapsed).

Kortebein, in response, filed a special appearance, objecting to the jurisdiction of the court on the grounds that he did not have sufficient minimum contacts with, nor had he consented to the jurisdiction, of the Texas courts. Further, he argued that the injunction should not be granted because he was not bound by the district court's final judgment in the class action. The district court rejected these claims, stating that it had inherent jurisdiction to enforce its judgment and Kortebein was directly interfering with that judgment, and enjoined him from proceeding in Illinois.

DISCUSSION

Kortebein asserts four points of error that raise the following two issues on appeal: (1) whether the district court erred in denying the special appearance because it lacked jurisdiction over the Illinois residents and (2) whether the district court erred in enjoining suit in Illinois because Kortebein may collaterally attack a class-action judgment in a forum of his choosing.

I. The Special Appearance

Kortebein asserts that certain due-process protections, including adequate representation, must be provided in class-action suits for a court to exercise jurisdiction over absent plaintiffs in order to bind them to the class-action judgment. [FN4] He contends that the absent plaintiffs in Cozad, including himself, were not adequately represented in the class action; therefore, the district court lacked jurisdiction to bind him to the class- action judgment. The district court erred, he maintains, in denying his special appearance in the hearing *85 on AmerUs's motion to enforce the class-action judgment.

FN4. The Illinois residents were among the absent plaintiffs in the Cozad class action.

[1][2] When in personam jurisdiction is challenged, we review all the evidence for factual sufficiency. *Smith v. Lanier*, 998 S.W.2d 324, 330 (Tex.App.--Austin 1999, pet. denied). We may reverse the decision of the district court only if its ruling is so against the great weight and preponderance of the evidence as to be manifestly erroneous or unjust. *Id.*

Kortebein relies on *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985), in which the United States Supreme Court explained that the Due Process Clause of the Fourteenth Amendment protects "persons" and not just "defendants," holding that minimal protections are required to bind absent plaintiffs to a judgment in a class action. *See id.* at 811, 105 S.Ct. 2965. The plaintiffs in *Phillips* were royalty owners who possessed rights to the leases from which Phillips Petroleum produced natural gas. *Id.* at 799, 105 S.Ct. 2965. They brought a nationwide class action in Kansas state court against Phillips, in which they sought to recover interest on royalty payments that Phillips had delayed paying. *Id.* The plaintiffs recovered a judgment that was affirmed by the Kansas Supreme Court. *Id.* Phillips

argued to the United States Supreme Court, as it had to the state courts, that Kansas did not have personal jurisdiction because the absent class members lacked minimum contacts with Kansas as required by *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). *Phillips*, 472 U.S. at 802, 105 S.Ct. 2965.

The Court, in International Shoe, set out the following test:

> If the defendant possessed certain minimum contacts with the State, so that it was "reasonable and just, according to our traditional conception of fair play and substantial justice" for a State to exercise personal jurisdiction, the State could force the defendant to defend himself in the forum, upon pain of default, and could bind him to a judgment.

Id. at 807, 105 S.Ct. 2965 (citing *Int'l Shoe*, 326 U.S. at 320, 66 S.Ct. 154). The *Phillips* Court emphasized that the purpose of the test is to avoid subjecting a defendant to the burden of "defending in a distant forum, unless [his] contacts with the forum make it just to force him to defend there." *Id.* Absent class-action plaintiffs, however, are subjected to fewer burdens; [FN5] therefore, the Due Process Clause "need not and does not afford [absent class-action plaintiffs] as much protection from state-court jurisdiction." *Id.* at 811, 105 S.Ct. 2965. The Court held that a state may exercise jurisdiction over absent class-action plaintiffs as long as minimal procedural due process protection is provided, even though the class- action plaintiffs may not possess minimum contacts with the forum. Id. In so holding, the Court noted that it had previously recognized the unique position of absent class-action plaintiffs in *Hansberry v. Lee*, 311 U.S. 32, 40-41, 61 S.Ct. 115, 85 L.Ed. 22 (1940), in which

the Court "explained that a 'class' or 'representative' suit was an exception to the rule that one could not be bound by judgment in
personam unless *86 one was made fully a party in the traditional sense." *Phillips*, 472 U.S. at 808, 105 S.Ct. 2965. In *Hansberry*, the Court concluded that class-action plaintiffs would be bound by the judgment only if they were adequately represented and the prosecution of the litigation was within the common interest of the class. *Hansberry*, 311 U.S. at 41, 61 S.Ct. 115.

FN5. The *Phillips* Court explained that "[u]nlike a defendant in a normal civil suit, an absent class-action plaintiff is not required to do anything." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985). Class-action plaintiffs need not hire counsel or appear in court. *Id.* "They are almost never subject to counterclaims or crossclaims, or liability for fees or costs." *Id.* They are not subject to coercive or punitive remedies. Id. They are not bound to pay any damages, although a valid judgment may extinguish claims that were litigated in the class action. *Id.*

The *Phillips* Court defined the requisites of minimal due-process protection as "notice plus an opportunity to be heard and participate in the litigation, whether in person or through counsel." *Phillips*, 472 U.S. at 812, 105 S.Ct. 2965. The notice must be "the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,' " and it must permit interested parties to opt out of the litigation. *Id.* Lastly, the class representative must adequately represent the absent class members' interests at all times. *Id.* In *Phillips*, the Court expressly pointed to the holdings of the Kansas trial court and supreme court that the class had received adequate representation in determining that due process was satisfied. *Id.* at 814, 105 S.Ct. 2965.

[3] Kortebein claims that the requirement of adequate representation was not met in the underlying Cozad class action. He contends that the class representatives in Cozad did not adequately represent his interests because the class representatives agreed to a settlement that was "unfair and inconsiderate of [Kortebein's] interests." The record reveals, however, that all of the requisites identified by the United States Supreme Court were satisfied in the Cozad lawsuit. First, the district court found that the class representatives adequately represented the absent class members, initially in the preliminary order certifying the class and approving the settlement, and subsequently, in the final judgment. Kortebein admits being apprised of these findings. Second, notice provided pursuant to the preliminary order gave interested parties the opportunity to either exclude themselves from the class or to object to certification. Interested parties were notified that failure to opt out of the settlement class released and waived all their present and future claims against AmerUs. Kortebein did not opt out. Third, the second notice outlining the procedures for settlement explained that pursuing special relief forfeited the right to seek basic relief. This notice also provided that the Texas district court had exclusive jurisdiction over all claims related to or arising from the settlement. With this knowledge, Kortebein sought special relief and participated in the arbitration procedures after the claim review team denied special relief. We hold that the evidence demonstrates that the minimal due process requirements mandated by *Phillips* were provided to Kortebein and the class-action judgment is binding on him. The district court's denial of Kortebein's special appearance is not against the great weight and preponderance of the evidence.

Kortebein asserts, however, that this case is similar to *In re Real Estate Title & Settlement Services Antitrust Litigation*, 869

F.2d 760 (3d Cir.1989), in which the Third Circuit held that absent class members had not consented to personal jurisdiction in Pennsylvania state court and, therefore, were not bound by the class-action judgment. *See id.* at 771. In *In re Real Estate*, two Arizona school boards moved to opt out of a class-action suit filed in Pennsylvania challenging price fixing by title insurance companies. The Pennsylvania district court refused to allow them to opt out. *Id.* at 762. As a result, the Third Circuit held that the school boards' participation *87 in the class action was against their wishes. Id. While the class action was pending in Pennsylvania, the Arizona attorney general filed suit in Arizona state court, asserting the same claims raised in the Pennsylvania class action. In response, the Pennsylvania state court granted the title insurance companies' motion to enjoin the suit in Arizona. Arizona's attorney general appealed that injunction to the Third Circuit, contending that the Pennsylvania court lacked
jurisdiction over the Arizona school boards in the class action, and therefore could not enjoin the Arizona suit. The Third Circuit agreed, holding that "if the member has not been given the opportunity to opt out in a class action involving both important injunctive relief and damage claims, the member must either have minimum contacts with the forum or consent to jurisdiction." *Id.* at 769.

[4] The present case is distinguishable from In re Real Estate. [FN6] Here, unlike the Arizona school boards, Kortebein was given the opportunity to opt out, but he chose not to exercise that option. Kortebein had notice that his failure to opt out would waive current and future claims he might have against AmerUs, that participation in the procedure seeking special relief waived any right to basic relief, and that any actions arising out of the settlement process were subject to the exclusive jurisdiction of the Texas court. Despite this notice, Kortebein participated in the class action

and settlement process. Kortebein's participation in the settlement process and arbitration, knowing that such participation subjected him to exclusive jurisdiction in Texas, provided the necessary minimum contacts with this forum and consent to jurisdiction in Texas. *See Grimes v. Vitalink Communications Corp.*, 17 F.3d 1553, 1559-60 (3d Cir.1994) (holding that by surrendering shares in response to a tender offer with knowledge of his status as a plaintiff class member, plaintiff submitted to the jurisdiction of the court rendering the class-action judgment).

FN6. For the same reasons, the present case is distinguishable from *Brown v. Ticor Title Insurance Co.*, 982 F.2d 386 (9th Cir.1992), also cited by Kortebein. *Brown* involved the same class action as in In re Real Estate, in which the plaintiffs were denied the opportunity to opt out of the class. *Id.* at 392. In addition, *Gonzales v. Cassidy*, 474 F.2d 67 (5th Cir.1973), is not relevant but for different reasons. In that case, the classaction judgment applied relief retrospectively to the named class representative, but prospectively as to all other class members. *Id.* at 76. The class representative's "failure to prosecute an appeal on behalf of the other members of his class rendered his representation of them inadequate." *Id.* at 75. Inadequate representation was apparent on the face of the class-action judgment in Gonzales, whereas here, the district court twice found the class members were adequately represented and no dueprocess deficiency is apparent on the face of the judgment.

We find, moreover, that Kortebein was afforded the minimum due-process protections required to bind absent class members to a class-action judgment, and that the final judgment in the class action was binding on Kortebein. The Texas district court, therefore, had jurisdiction to grant the motion to enforce judgment and properly denied the special appearance. We overrule Kortebein's first three points of error.

II. The Collateral Attack

Kortebein, again relying on *In re Real Estate*, asserts that he may collaterally attack the class-action judgment in a forum

of his choice. In that case, the Third Circuit explained that "collateral attacks have been considered to be a necessary part of the class action scheme." *In re *88 Real Estate*, 869 F.2d at 769. In fact, the federal court stated that "the fact that some plaintiffs will be able to extricate themselves from class action judgments if subsequent courts find them to be inadequately represented is integral to the constitutionality of the class action procedure." *Id.*

[5][6][7][8][9] A collateral attack is an attempt to avoid the effect of a judgment in a proceeding brought for some other purpose. *Ranger Ins. Co. v. Rogers*, 530 S.W.2d 162, 167 (Tex.Civ.App.--Austin 1975, writ ref'd n.r.e.). A direct attack on a judgment, conversely, is an attempt to change that judgment in a proceeding brought for that specific purpose, such as an appeal or a bill of review. *Id.* The grounds upon which a collateral attack may be successful are that the court rendering judgment has (1) no jurisdiction of the person of a party, or his property, (2) no jurisdiction of the subject matter of the suit, (3) no jurisdiction to enter the particular judgment entered, or (4) no capacity to act as a court. Id. A judgment adjudicating the claims of a person over whom the court had no jurisdiction is void and thus, subject to collateral attack. *Browning v. Placke*, 698 S.W.2d 362, 363 (Tex.1985). The record must affirmatively show that a court's jurisdiction did not attach in a particular case. *Tucker v. Cole*, 215 S.W.2d 252, 255 (Tex.Civ.App.--Texarkana 1948, writ ref'd n.r.e.).

The collateral attack in *In re Real Estate* was appropriate because the Pennsylvania state court failed to afford the Arizona school boards the minimal protection necessary to bind absent class members: it forced the Arizona school boards to participate in the class action against their wishes. A collateral attack in the present case, however, is inappropriate because we have already held that the district

court in Cozad afforded minimal protection to absent class members and thus had jurisdiction to issue a binding judgment on Kortebein. Consequently, that judgment may not be collaterally attacked in another forum. *See Browning*, 698 S.W.2d at 363.

[10][11][12] Even if we agreed with Kortebein's suggestion that he may collaterally attack the judgment based solely on allegations of inadequate representation, the facts in the record direct us against such a course of action. *See Tucker*, 215 S.W.2d at 255. In general, the certifying court is charged with protecting the interests of absent class members. *Epstein v. MCA, Inc.*, 179 F.3d 641, 648 (9th Cir.1999) (citing *Phillips*, 472 U.S. at 809, 105 S.Ct. 2965) (on remand from the United States Supreme Court). Absent class members' due-process right to adequate representation is protected by the adoption of appropriate procedures by the certifying court and by appeal within the state system and by direct review in the United States Supreme Court. *Id.* Due process does not require collateral second-guessing of those determinations and that review. Id. In the instant case, the district court twice determined that the class representatives provided adequate representation to the absent class members. Kortebein did not appeal these findings nor did he file a bill of review. Instead, he voluntarily participated in the settlement process. The district court in Cozad took appropriate measures to ensure adequate representation and Kortebein's actions support this conclusion. In fact, when Kortebein initially sued in Illinois, he did not assert inadequate representation. This complaint did not arise until AmerUs asked the Texas district court to enforce its judgment.

[13][14] Every court with jurisdiction to render a judgment has the inherent power to enforce its judgments. *Arndt v. Farris*, 633 S.W.2d 497, 499 (Tex.1982). In addition, a court

may exercise this inherent *89 power by any suitable method, id. at 499, which includes the issuance of a writ of injunction on proceeding in another court with a suit that would delay, obstruct, or interfere with the proper enforcement of a judgment. *Hunt Prod. Co. v. Burrage*, 104 S.W.2d 84, 87 (Tex.Civ.App.--Dallas 1937, writ dism'd w.o.j.). Because the district court in Cozad afforded the required minimal protection to absent class members, it acquired jurisdiction over Kortebein. The class-action judgment is binding on Kortebein and he may not collaterally attack that judgment elsewhere. The district court properly enjoined the suit in Illinois collaterally attacking the Texas class-action judgment. We overrule Kortebein's fourth point of error.

CONCLUSION

We hold that the district court acquired jurisdiction over the Illinois class members and properly denied Kortebein's special appearance. Likewise the district court properly enforced the Texas class-action judgment by enjoining the suit in Illinois to collaterally attack that judgment. We therefore affirm the trial court's judgment in all regards.

END OF DOCUMENT

THE SUPREME COURT OF TEXAS
Post Office Box 12248
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August 23, 2001

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RE: Case Number 01-0555
Court of Appeals Number: 03-00-00591-CV
Trial Court Number: 95-11315

Style: STUART KORTEBEIN, ET AL.
v.
AMERICAN MUTUAL LIFE INSURANCE CO.,
now known as AMERUS LIFE INSURANCE CO.

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review in the above styled case.

Sincerely,
John T. Adams, Clerk
s/ Tanya R. Hunter, Deputy Clerk

cc: Ms. Diane O'Neal, Clerk
Ms. Amalia Rodriguez-Mendoza

CAUSE NO. 95-11315

BRUCE C. COZAD	§	IN THE DISTRICT COURT
AND WENDY COZAD	§	
Plaintiffs,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
AMERICAN MUTUAL LIFE	§	
INSURANCE COMPANY	§	
Defendant.	§	98TH JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement is made on the 23rd day of May, 1997, between Bruce W. Cozad and Wendy Cozad (the "Plaintiffs"), individually and on behalf of the Class Members (as defined below) and Defendant AmerUs Life Insurance Company ("AmerUs").

RECITALS:

A. The Plaintiffs filed a lawsuit against American Mutual Life Insurance Company on August 31,1995, in the 98th Judicial District Court of Travis County, Texas, bearing Cause No. 95-11315 (as amended on March 4, 1996 and on May 23, 1997, the "Lawsuit"). American Mutual Life Insurance Company changed its name to AmerUs Life Insurance Company effective June 30, 1996.

B. The Lawsuit purports to be brought on behalf of a nationwide class of persons who purchased individual traditional whole life policies from AmerUs in the United States during the period January 1, 1980 to December 31, 1995 (the "Putative Class").

C. The Lawsuit alleges claims arising from and relating to alleged misrepresentations concerning:

i. The number of out-of-pocket cash premium payments required to be paid for a policy to remain in force and/or the benefits to be realized or paid based upon a particular number of cash premium payments and/or amount of illustrated dividends (sometimes referred to as "vanishing premiums" or "disappearing premiums"); and

ii. The use of an existing policy's cash values or dividends to purchase or maintain a new policy or other policy by means of a surrender, withdrawal or loan, or the replacement of an existing policy with another not having substantially different benefits (sometimes referred to as "twisting" or "churning"); and

iii. The assertion that the product was sold as an investment, retirement or savings vehicle rather than a life insurance policy.

D. Plaintiffs' counsel have conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of their claims and potential claims and to determine how best to serve the interests of Plaintiffs and the Putative Class. Plaintiffs' counsel have reviewed in excess of 20,000 pages of documents and electronic data produced by AmerUs, have taken depositions of AmerUs executives, senior management and agents, and have interviewed present and former policyowners, agents and employees of AmerUs.

E. Based upon their discovery, investigation and evaluation of the facts and law relating to the matters

alleged in this Lawsuit, Plaintiffs, for themselves and in their capacities as representatives of the Settlement Class (as defined below), together with counsel for the Settlement Class, have agreed to settle the Lawsuit, pursuant to the provisions of this Agreement, after considering such factors as: (i) the substantial benefits to Plaintiffs and the members of the Settlement Class under the terms of this settlement; (ii) the uncertainty of being able to prove the allegations in the Lawsuit, including any common questions among members of the Putative Class; (iii) the attendant risks of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; (iv) the uncertainty inherent in the various theories of damages, even if Plaintiffs could establish AmerUs' liability; and (v) the desirability of consummating this settlement promptly, to provide effective relief to Plaintiffs and the members of the Settlement Class.

F. AmerUs expressly denies any wrongdoing alleged in the Lawsuit and does not concede any liability in connection with any facts or claims that have been or could have been alleged against it in this Lawsuit. AmerUs maintains that application of the "vanishing premium" or "disappearing premium" concept, under which dividends and other policy values can be used to pay premiums on traditional whole life insurance policies, is often beneficial to policyowners by reducing the number of out-of-pocket premiums that have to be paid for life insurance coverage. AmerUs maintains that its sales illustrations, policies, other sales materials and the presentations of its agents fully and fairly disclosed that dividends were not guaranteed and that changes in the dividend scale could affect the policy values and the number of premiums payable. AmerUs also contends that the use of policy cash values or dividend values to finance the purchase of insurance, as well as the replacement of an existing policy with a new policy, is frequently beneficial to

policyowners and it was AmerUs' policy at alt times to conduct such sales only when appropriate, and with full and fair disclosure to and acceptance by the policyowner. AmerUs also maintains that it never encouraged sales without full disclosure that the product being offered was life insurance. AmerUs maintains that its policies, policy applications, sales materials and the presentations of its agents fully disclosed that customers were purchasing life insurance and that its illustrations, while based on the current dividend scale, fully disclosed that future performance was dependent on dividends, which were neither guaranteed nor estimated for the future. AmerUs also believes that it has a number of legal defenses, including statutes of limitations, which it could assert in litigation that could defeat or substantially limit the claims of the Plaintiffs.

G. Nonetheless, AmerUs is concerned that some of its policyowners may be disappointed in connection with the purchase of their policies, and AmerUs wants to provide the members of the Settlement Class with an opportunity to obtain relief designed to address their concerns. AmerUs considers it desirable for the Lawsuit to be settled and dismissed because this settlement will (i) provide substantial benefits to AmerUs' present and former policyowners; (ii) confer substantial benefits on AmerUs, including the avoidance of further expense and disruption of the management and operation of AmerUs' business due to the pendency and defense of this Lawsuit; (iii) finally put Plaintiffs' claims in the underlying matters to rest; and (iv) avoid the substantial expense, burdens and uncertainties associated with continued litigation of this Lawsuit.

H. This Settlement Agreement is the product of extensive arms' length negotiations and has been reviewed by various consultants and experts retained by the parties.

Plaintiffs and Settlement Class Counsel have concluded, based upon their own investigation and analysis by their experts, that this settlement is fair, reasonable and adequate because it provides substantial benefits to the Class without the delay attendant upon trial and appeals and is therefore in the best interests of the Class.

AGREEMENTS:

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by, between and among Plaintiffs (individually and in their respective capacities as representatives of the Class), Settlement Class Counsel and AmerUs that the Lawsuit and the matters raised by it are settled and compromised on the following terms and conditions, and judgment is entered that Plaintiffs take nothing by their suit, subject to the approval of the Court.

I. DEFINITIONS

In addition to terms defined elsewhere in this Settlement Agreement, the following defined terms are used herein:

A. Affiliate. "Affiliate" means any predecessor, successor, parent, subsidiary, partner, shareholder, heir, administrator, executor, successor in interest or assign of a specified person or entity, or any person or entity controlling (directly or indirectly), controlled by or under common control with such specified person or entity, together with the respective past, present and future officers, directors, employees, attorneys, agents, general agents, brokers and representatives of any or all of the foregoing.

B. Agent Questionnaire. "Agent Questionnaire" means the agent questionnaire substantially in the form attached hereto as Exhibit H.

C. AmerUs. "AmerUs" means AmerUs Life Insurance Company, formerly known as American Mutual Life Insurance Company and formerly known as Central Life Assurance Company.

D. Available Documents. "Available Documents" means all originals or true copies of any written certificates, agreements, instruments, documents, letters, memoranda, notes or any other documentation of any kind with respect to any Policy or insured, taken as a whole, including without limitation illustrations, sales materials, the policy contract and any accompanying materials, the application, and correspondence concerning a Policy. Available Documents shall include all documents in a Claim File which are submitted by or on behalf of a Class Member, AmerUs and, where applicable, an insurance agent, and shall include any and all computerized or other Policy records maintained by AmerUs.

E. Base Premium. "Base Premium" means the premium and policy fee payable for a stated policy year on a policy, exclusive of riders and amounts relating to substandard ratings and modal factors.

F. Claim File. "Claim File" means a file created with respect to each Policy submitted to the Claim Process, and shall contain (as available) originals or copies of the Proof of Claim, any Agent's Questionnaire, and all Available Documents reviewed or generated in order to determine the level of relief for which such claim qualifies, together with copies of all subsequent documentation and/or correspondence generated as part of the Claim Process.

G. Claim Process. "Claim Process" means the process for resolving claims submitted for Special Relief, as described in Section II.B. hereof.

H. Claim Review Team. "Claim Review Team" means a team of three to five individuals selected by AmerUs, all of whom may be employees of AmerUs, who shall review the Claim Files and determine claims as provided herein. AmerUs may appoint multiple Claim Review Teams, but each Claim File shall be reviewed by only one Claim Review Team.

I. Class Member. A "Class Member" means a member of the Settlement Class who does not timely file a Request for Exclusion from the Settlement Class as provided herein. If the policy in question has multiple owners, then all such owners shall be considered to be one Class Member and must jointly take any action required of or permitted for Class Members hereunder.

J. Class Notice. "Class Notice" means the class notice substantially in the form attached hereto as Exhibit C, which may be accompanied by a cover letter and forms needed for implementation of the purpose of such notice.

K. Court. The "Court" means the 98th Judicial District Court of Travis County, Texas, or any other court in which the Lawsuit is pending at or prior to the Final Settlement Date.

L. Fairness Hearing. "Fairness Hearing" means the hearing at or after which the Court will finally decide whether to approve this Settlement Agreement as fair, reasonable and adequate by entry of the Final Order and Judgment.

M. Final Order and Judgment. "Final Order and Judgment" means an order of the Court pursuant to Tex. R. Civ. P. 42(c)(3), which is in all material respects in the form attached hereto as Exhibit J.

N. Final Settlement Date. "Final Settlement Date" refers to the date on which the Court's Final Order and Judgment becomes final and is no longer subject to appeal or review. This date shall be determined as follows:

i. if no appeal has been taken from the Final Order and Judgment, such order becomes final on the date upon which the time to appeal therefrom has expired; or

ii. if any appeal has been taken from the Final Order and Judgment, such order becomes final on the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing *en banc*, applications for writ of error and petitions for writ of certiorari or any other form of review have been finally disposed of in a manner that affirms in all respects the Final Order and Judgment.

O. Independent Arbiter. "Independent Arbiter" means Tom Collins of Austin, Texas, or any successor selected by agreement of the parties.

P. In Force. A Policy is "In Force" at a specified date if it is not Terminated as of such date.

Q. Member Representative. "Member Representative" means an individual or a successor selected by Settlement

Class Counsel with the approval of AmerUs, which approval shall not be unreasonably withheld.

R. Modified Loan Rate. "Modified Loan Rate" means the interest rate which is representative of AmerUs' short-term cost of borrowing plus 50 basis points, and shall be determined from time to time as provided herein. Where interest as provided herein is charged in advance, the short-term rate described above will be converted to an equivalent "in advance" rate.

S. Notice of Determination. "Notice of Determination" means a notice of determination provided to a Class Member as described in II.B.5. hereof.

T. Plaintiffs. "Plaintiffs" means Bruce W. Cozad, Wendy Cozad, Joanne Baker and Merle S. Baker.

U. Policy. "Policy" means any life insurance policy described in the definition of the term "Settlement Class" and owned by a Class Member, provided, however, that if a Class Member has a Policy which was replaced with or converted into another Policy, then the two policies together will be considered a single "Policy" for purposes of applying the relief available hereunder.

V. Post-Settlement Notice. "Post-Settlement Notice" means a post-settlement notice substantially in the form attached hereto as Exhibit E, which may be accompanied by a cover letter and forms needed for implementation of the purpose of such notice.

W. Preliminary Order. "Preliminary Order" means an order of the Court which is in all material respects in the form attached hereto as Exhibit 1.

X. Proof of Claim. "Proof of Claim" means a proof of claim substantially in the form attached hereto as Exhibit G.

Y. Request for Proof of Claim. "Request for Proof of Claim" means a request form substantially in the form attached hereto as Exhibit F.

Z. Request for Exclusion. "Request for Exclusion" means a request for exclusion substantially in the form attached hereto as Exhibit D or a substantially similar form submitted by a Class Member requesting exclusion from the Settlement Class.

AA. Settlement Agreement. "Settlement Agreement" means, collectively, this Settlement Agreement together with all exhibits hereto and all ancillary documents referred to herein or therein.

BB. Settlement Class. The "Settlement Class" means those persons or entities who have, or had at the time of the Policy's termination, an ownership interest in one or more (i) individual traditional whole life insurance policies issued by Central Life Assurance Company between January 1, 1980 and December 31. 1994 or (ii) Heritage Series individual traditional whole life insurance policies issued by American Mutual Life Insurance Company between January I, 1995 and December 31, 1995; provided, however, that policies on which a death claim has been made prior to the Settlement Date shall be excluded from the policies enumerated above. The phrase "individual traditional whole life insurance policies" refers to those policy types listed in Exhibit B hereto.

CC. Settlement Class Counsel. "Settlement Class Counsel" means Jerry L. Bryan II, of the Law Offices of Jerry

L. Bryan II in Houston, Texas, and Ethan L. Shaw, of Moore, Landrey LLP in Beaumont, Texas.

DD. Settlement Date. "Settlement Date" means the date first set forth above.

EE. Special Relief Rules. "Special Relief Rules" means the special relief rules attached hereto as Exhibit A.

FF. Terminated. A Policy is "Terminated" at a specified dale if it has a status other than "active" (including "backbilled"), "premium waiver," "payer premium waiver" or "Value Pay" as of such date on the internal business records of AmerUs. The "Terminated" status includes, without limitation, surrendered, lapsed, converted, canceled, expired, matured and paid-up policies, policies on which a death claim has been made, and policies in which a non-forfeiture option such as extended term insurance or reduced paid-up insurance has been elected.

GG. Vanishing Premium Illustration. "Vanishing Premium Illustration" means a policy illustration delivered by or in connection with a sale of a Policy, which illustration bears the words "disappearing premium illustration" or "vanishing premium illustration" and/or includes a column indicating a permanent cessation of out-of-pocket premium outlay prior to policy maturity or paid-up status; provided, however, that an illustration indicating premium payments to age 65 or older, followed by no further out-of-pocket premium outlay, shall not be considered a Vanishing Premium Illustration unless such age occurs within the first ten years following policy issuance.

II. RELIEF FOR THE CLASS

As set forth below, AmerUs will offer Reduced Rate Policy Loans, New Policy Contributions and New Annuity Contributions to Class Members. These benefits are referred to as "Basic Relief" herein. Alternatively, Class Members will have an opportunity to submit Policies owned by them to the Claim Process in which they may seek to qualify for other remedies offered by AmerUs. Those remedies are referred to as "Special Relief herein. Relief is available on a per Policy basis; if a Class Member owns multiple Policies (other than as specified in Section I.V. hereof), the Class Member may elect one form of Basic Relief or Special Relief as to each such Policy. If a Class Member submits a Policy to the Claim Process, the Class Member generally cannot obtain Basic Relief with respect to that Policy except as set forth in the Special Relief Rules. Each Class Member receiving relief hereunder shall be required to confirm that the Class Member owns the right to claim such relief and has not transferred or assigned such right to any other person or entity.

A. Basic Relief.

1. Availability. Basic Relief is available for each Policy which the Class Member does not submit to the Claim Process. Class Members who do not timely submit a Proof of Claim as provided herein will be entitled to obtain Basic Relief. The Post-Settlement Notice will contain instructions concerning what actions are required, and when those actions must be taken, in order to receive Basic Relief benefits.

2. Benefits. The Basic Relief benefits are determined by the status of the Class Member and the Class Member's Policy. As to each Policy for which Basic Relief is received:

a. If the Policy is In Force at the Final Settlement Date, the Class Member may, as provided below, be able to obtain a Reduced Rate Policy Loan to pay up to three annual premium payments on such Policy.

b. If the Policy is Terminated at the Final Settlement Date, or if the Policy is still In Force but the maximum amount available through the Reduced Rate Policy Loan is less than one annual premium on the Policy, the Class Member may obtain a New Policy Contribution or a New Annuity Contribution upon the purchase of a qualifying new life insurance policy or annuity, respectively.

c. Notwithstanding the foregoing, if the Class Member is deceased as of the Final Settlement Date, no Basic Relief shall be available.

3. Descriptions of Benefits.

a. Reduced Rate Policy Loans. AmerUs will make a Reduced Rate Policy Loan to a Class Member at a reduced rate of interest, in installments, to pay all or pay up to three (3) annual premiums on a Policy. These loans are subject to all of the following conditions:

i. The Reduced Rate Policy Loan shall be disbursed by AmerUs in

installments on the policy anniversary, and the maximum amount of the installment available in any policy year shall be the amount of the premium due on the Policy for that policy year (which shall include the full annual premium billed for the Policy, but shall not include premiums on any rider added to the Policy after the Settlement Date, loan interest, or any amounts payable as premiums in advance or into any premium deposit fund).

ii. Proceeds of each installment of the Reduced Rate Policy Loan shall be used to pay the premium due for that policy year, and such proceeds shall not be disbursed to the Class Member in cash.

iii. The amount borrowed by a Class Member through a Reduced Rate Policy Loan or any installment thereof may not exceed the net loan value on the Policy calculated using the method described in the Policy except as expressly modified herein, and the amount borrowed and interest thereon shall be secured by the Policy's cash value through an assignment of policy values as collateral in the

manner provided in the Policy applicable to policy loans.

iv. The initial installment must be taken no later than a policy anniversary on or prior to December 31, 2000 and, after the initial installment is advanced, any subsequent installments must be taken, if at all, the immediately succeeding policy anniversaries.

v. The interest rate for each installment of the Reduced Rate Policy Loan shall be the Modified Loan Rate, as determined as of the date of each such installment and as adjusted no more frequently than annually during the five-year term of such installment to reflect changes in the Modified Loan Rate.

vi. Any installment of the Reduced Rate Policy Loan may be repaid within its five-year term as determined by the policyowner. The Class Member must agree that any principal or interest not repaid prior to the fifth anniversary of the date of such installment shall automatically convert to a standard policy loan and shall be governed by the terms of the policy contract (including interest rate) regarding

policy loans. If at any time (whether before or after the end of such five-year period), the amount borrowed, plus interest, exceeds the available loan values in the Policy, the Reduced Rate Policy Loan may cause the Policy to lapse.

vii. The Class Member must agree that the dividend option following a Class Member's election to obtain a Reduced Rate Policy Loan must be set to an option other than "Paid in Cash" or "Dividends to Reduce Premiums" and, if one of those options is elected while any portion of the Reduced Rate Policy Loan is outstanding, the Reduced Rate Policy Loan shall immediately and automatically be converted to a standard policy loan and shall thereafter be governed by the terms of the policy contract (including interest rate)regarding policy loans. Further, at such time the policyowner will change the premium mode to "annual" and remove the Policy from any list bill until after all installments of the Reduced Rate Policy Loan have been disbursed.

viii. Reduced Rate Policy Loans shall not be taken into account for

purposes of calculating direct recognition factors.

ix. Except as expressly otherwise provided in this Section II.A.3.a., Reduced Rate Policy Loans shall be governed by the terms of the policy loan provisions of the Policy.

b. New Policy Contribution. A New Policy Contribution is available as provided in Section II.A.2. hereof to Class Members who, within six (6) months after the Final Settlement Date, purchase a new generally available individual traditional whole life insurance product from AmerUs having the same insured and policyowner(s) as the Policy with respect to which this relief is being obtained, and the same face amount as such Policy (not including any riders thereon). At the time the Class Member has paid the first annual premium on such new policy, AmerUs will purchase a paid-up addition rider with a single premium equal to thirty-five percent (35%) of the first year's Base Premium on the new policy. The new policy will be subject to AmerUs' normal full underwriting requirements and issue limits, and to all the provisions of the generally available policy contract. For the first seven (7) years of the new policy, the new policy's values, if any, will be assigned to AmerUs as security for the amount of the contribution

AmerUs makes as described herein, and AmerUs shall receive reimbursement for such amount prior to any excess being paid to the Class Member if the Class Member surrenders such new policy during that seven-year period, and the values available for any loan or withdrawal by the Class Member shall be reduced by the amount of such contribution.

c. New Annuity Contribution. A New Annuity Contribution is available as provided in Section II.A.2. hereof to Class Members who, within six (6) months after the Final Settlement Date, purchase a new generally available individual annuity product issued by AmerUs having an initial premium equal to at least $2,000, but no greater than $50,000. At the time the Class Member has paid the initial premium on such new annuity, AmerUs will contribute an amount equal to two and one-half percent (2.5%) of such initial premium to the annuity fund. The new annuity will be subject to all the provisions of the generally available annuity contract, including without limitation provisions for expense charges, and the annuity will be subject to normal issue limits. Normal surrender charges during the initial years of the annuity, as provided in the annuity contract, will also be applicable to the amount of the New Annuity Contribution.

B. Special Relief.

Any Class Member may assert with respect to a Policy owned by such Class Member a claim alleging that AmerUs' agent or other representative made one or more material misrepresentations regarding (i) the number of out-of-pocket payments to be paid to keep the Policy in force; (ii) the amount, whether in the form of dividends, net cash value, death benefit, or any other benefit, that would be realized or paid under the Policy based on a fixed number or amount of out-of-pocket payments being made by, on behalf of, or for the benefit of the Class Member; or (iii) certain other matters which are more fully described in the Special Relief Rules. Class Members must pursue any such claim through the Claim Process described in Sections B.I. through 6. below and in the Special Relief Rules. More detailed procedures applicable to the Claim Process shall be established by agreement of AmerUs and Settlement Class Counsel prior to the Fairness Hearing.

1. Initial Submission of Claim. Within thirty (30) days after the Final Settlement Date, AmerUs will mail a Post-Settlement Notice to Class Members which will, among other things, instruct Class Members to fully complete and return an enclosed Request for Claim Form within thirty (30) days from the date of the notice if they want to submit any Policy they own to the Claim Process. Upon receiving the Request for Claim Form from any Class Member, AmerUs will, within 10 days, mail to the Class Member a Proof of Claim, which the Class Member must fully complete, sign, have notarized and mail, together with originals or copies of all documents in the Class Member's possession which relate to the Policy, to AmerUs within thirty (30) days from the date the Proof of Claim was mailed to the Class Member. Any Class Member who does not comply with these time requirements shall not be eligible to

participate in the Claim Process and will be eligible for Basic Relief.

2. Claim Files. Upon receipt of a Proof of Claim completed by a Class Member, AmerUs will create a Claim File with respect to the subject Policy.

3. Claim Review Team.

a. A Claim Review Team will review the Claim Files and assign each claim to a level of Special Relief or make a finding that the Policy does not qualify for Special Relief.

b. The Claim Review Team will evaluate each claim and base its decision on the total facts and circumstances of each case in accordance with the qualifications set forth in the Special Relief Rules. As part of this process, the Claim Review Team may, but is not required to, obtain a completed Agent Questionnaire and copies of documentation from the sales representative(s) who sold the Policy to the Class Member. If any sales representative having an active contract with AmerUs at the time the claim is reviewed does not submit responses to the Agent Questionnaire, the no information from that representative's file will be taken into account as part of the Claim Process other than copies of letters, memoranda, faxes and other written communications between the representative and the policyowner or between the representative and AmerUs relating to the subject Policy. If a Class Member submits a Proof of Claim with respect to more than one Policy, the Claim Review Team may consider information from all Claim Files relating to that Class Member in evaluating each of those Claim Files.

c. If the Claim Review Team determines that a claim qualifies for relief in Level One, Two or Three as specified in the Special Relief Rules, AmerUs will offer the Class Member the relief specified for that level in the Special Relief Rules. If the Claim Review Team determines that a claim does not qualify for Special Relief, the Class Member will not be offered any relief hereunder except as specifically otherwise provided in the Special Relief Rules.

d. Except for the Class Member's right to invoke the Binding Review Process, as provided below, the Claim Review Team's decision is binding upon AmerUs and on individual Class Members, and is not subject to appeal by Class Members or AmerUs for any reason or to any forum.

4. Member Representative. The Member Representative will review those Claim Files not assigned to Level Three and whose classification is not determined by objective criteria. In the event of a disagreement with the findings of the Claim Review Team concerning the application of the Special Relief Rules to such Claim Files, the Member Representative will notify the Claim Review Team of the basis for such disagreement before the Notice of Determination is mailed to the Class Member. The Member Representative may review and/or audit up to 5% of the Claim Files, randomly selected, which are not subject to review as provided above during regular business hours upon reasonable prior notice to AmerUs. In the event that the Member Representative discovers any pattern of mis-classification through this audit process, the Member Representative shall first consult with the Claim Review Team to attempt to resolve the situation and, failing agreement, the issue shall be submitted to the Independent Arbiter for resolution. The decision of the Independent Arbiter with respect to such issue shall be binding on

AmerUs and the Class Members. If the determination of the Independent Arbiter is inconsistent with the manner in which claims have been classified, AmerUs will cause previously objectively determined claims to be re-reviewed and (if necessary) re-classified in accordance with the Independent Arbiter's decision.

5. Notice of Determination. A Notice of Determination will be sent to each Class Member participating in the Claim Process. The Notice of Determination will contain the determination of the Claim Review Team, including a brief explanation of the reason for the classification assigned to the claim and, for those claims which were reviewed by the Member Representative, a statement of whether the Member Representative agreed or disagreed with the determination of the Claim Review Team concerning the application of the Special Relief Rules. The Notice of Determination will provide information on how the Class Member can receive the relief offered, if any, and notify the Class Member of the availability of and the process for invoking the Binding Review Process.

6. Binding Review Process. A Class Member whose claim is not classified in Level Three who wishes to obtain review of the Claim Review Team's decision must notify AmerUs in writing of his or her desire to do so within 30 days of the date of the Notice of Determination. Any Class Member who does not comply with this timing requirement will not be eligible to obtain a review of the Claim Review Team's decision, and that decision shall thereupon be binding for all purposes. Upon receipt of a request for review, the Claim Review Team will send a copy of the Claim File to the Independent Arbiter. The request for review will not be included in the Claim File as transmitted to the Independent Arbiter. The Independent Arbiter will review the claim and classify it according to the Special

Relief Rules. The Independent Arbiter may award only the relief prescribed in the Special Relief Rules for the particular level, if any, for which the claim qualifies. When the Independent Arbiter has made his or her decision, he or she will send written notice of such decision to AmerUs, which will promptly notify the Class Member of such decision. AmerUs will offer such relief as may be available at the level of Special Relief, if any, to which the Independent Arbiter assigns such claim, and will provide information on how the Class Member can receive such relief. The Independent Arbiter's decisions are binding on individual Class Members and AmerUs and are not subject to appeal by Class Members or AmerUs for any reason or to any forum.

III. RELEASE.

A. Release and Covenant Not to Sue.

1. Release of Claims. Effective upon the Final Settlement Date, Plaintiffs and all Class Members hereby expressly agree that neither they nor any persons claiming through or on their behalf (including any insured or beneficiary of any Policy) shall now or hereafter institute, maintain or assert against AmerUs or any of its past, present or future Affiliates (collectively, the "Releasees"), either directly or indirectly, on their own behalf or on behalf of the Settlement Class or any other person or entity, and that they forever release and discharge the Releasees from, any and all causes of action, claims, damages, equitable, legal and administrative relief, interest, demands or rights (including without limitation claims for mental anguish), whether based on federal, state or local statute, ordinance, regulation, contract, common law or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiffs or any Class Member

against the Releasees (or any of them) in the Lawsuit or any other court action or before any administrative body (including any state department of insurance or other regulatory body), tribunal, arbitration panel or other adjudicatory body on the basis of, connected with, arising out of, or relating to, in whole or in part, any of the following (all of which acts, omissions, facts, matters, transactions, occurrences and representations are collectively referred to as the "Released Transactions");

a. Any or all of the acts, omissions, facts, matters, transactions, occurrences or representations that have been, could have been, may be or could be directly or indirectly alleged, asserted, described, set forth or referred to in the Lawsuit; and/or "

b. Any or all of the acts, omissions, facts, matters, transactions or occurrences, or any oral or written statements or representations allegedly made in connection with or directly or indirectly relating to the marketing, solicitation, application, underwriting, acceptance, sale, purchase, operation, retention, administration, or replacement (by means of surrender, partial surrender, loans respecting, withdrawal and/or termination) of the Policies or any insurance policy or annuity replaced by or sold in connection with, or relating in any way, directly or indirectly, to the sale or solicitation of the Policies, including without limitation any acts, omissions, facts, matters, transactions, occurrences, or oral or written statements or representations relating to;

(1) The number of out-of-pocket cash premium payments that would need to be paid to keep a Policy in force and/or the amount, whether in the form of dividends, cash values, death benefit or

any other benefit, that would be realized or paid under a Policy based on a fixed or limited number of out-of- pocket premium payments being made by, on behalf of or for the benefit of the Class Member (sometimes referred to as "vanishing premiums" or "disappearing premiums"), and/or

(2) The ability to keep or not to keep the Policies in force based on a fixed or limited number and/or amount of premium payments or dividend values, and/or the amount that would be realized or paid under the policies based on a fixed number and/or amount of cash payments; and/or

(3) The interest rate credited or to be credited to premiums paid on the Policies, or to amounts within the Policies, and the deductions charged or to be charged against the Policies; and/or

(4) The nature, characteristics, terms, appropriateness, suitability, descriptions and operation of the Policies; and/or

(5) The relationship between the Policies' cash surrender value and the cumulative amount of premiums paid; and/or

(6) The use of an existing policy's cash value or dividends or other values to purchase or maintain a new policy or other policy by means of a surrender, withdrawal or

loan (sometimes referred to as "twisting" or "churning"); and/or

(7) The replacement of an existing life insurance policy, annuity or other financial vehicle with a new life insurance policy; and/or

(8) Whether the Policies were or were not life insurance or that Plaintiffs' or Class Members' (and/or purchasers') objectives would be funded by the cash values and/or benefits derived from a life insurance policy; and/or

(9) Whether the Policies were, would operate or could function as an investment, retirement or savings vehicle; and/or

(10) Whether a part of the premiums paid would not be credited toward an investment, retirement or savings account or the Policies' cash values, but would be used to offset AmerUs' commission, sales, administration, mortality and/or other expenses; and/or

(11) The rate of return on premiums paid in terms of cash value or cash surrender value; and/or

(12) AmerUs' dividend, interest and administrative charge policies and practices; the amount of dividends paid and/or credited; dividend scales and loan interest rates; illustrations of dividend

values, cash values, loan amounts, or death benefits; or any other matters (including without limitation the effect of the "DAC" tax as described below) relating to or affecting dividends, policy values, premium charges, illustrations and/or policy loans; and/or

(13) The manner in which AmerUs and/or its Affiliates trained and supervised any of the Releasees, including but not limited to AmerUs' general agents, agents, producers, insurance brokers, solicitors and representatives, or anyone acting on behalf of or under the direction of any of the foregoing; and/or

(14) Any acts, omissions, facts, matters, transactions, occurrences, or oral or written statements or representations relating to any of the foregoing; and/or

c. Any or all acts, omissions, facts, matters, transactions, occurrences or oral or written statements or representations made or allegedly made in connection with or directly or indirectly relating to the Settlement Agreement or the settlement of the Lawsuit, except as provided in Section III.A.5. below; and/or

d. Any and all claims for attorneys' fees, costs or disbursements incurred by Lead Counsel or any other counsel representing Plaintiffs or Class Members, or by Plaintiffs or the Class Members, or any of them, in connection with or related in any manner to the Lawsuit, the settlement of the Lawsuit, the administration of such

settlement and/or the Released Transactions except to the extent otherwise specified in the Settlement Agreement-

2. Release of Other Remedies. Effective upon the Final Settlement Date, the Plaintiffs and all Class Members further release and waive any claim to or right in any money damages or equitable or other relief that might be awarded or made available as a result of any action or proceeding by a department of insurance or other regulatory commission in any way arising from or relating in whole or in part to the Released Transactions.

3. Attorneys' Fees and Expenses. Without in any way limiting the scope of this Release, this Release covers, without limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Settlement Class Counsel or any other counsel representing Plaintiffs or the Class Members, or by Plaintiffs or the Class Members or any of them in connection with or relating in any manner to the Lawsuit, the settlement of the Lawsuit, the administration of such Settlement and/or the Released Transactions, except to the extent otherwise specified in this Settlement Agreement.

4. Unknown Claims. In connection with this Release, Plaintiffs and the Class Members acknowledge that they are aware that they may hereafter discover claims or damage presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the Released Transactions and all claims released herein. Nevertheless, it is the intention of Plaintiffs and the Class Members in executing this Settlement Agreement fully, finally and forever to settle and release all such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any actions). Plaintiffs and the Class Members expressly

understand that Section 1542 of the Civil Code of the State of California provides that a general release does not extend to claims which a creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected the settlement with the debtor. To the extent that, notwithstanding the choice of law provisions in this Settlement Agreement, California or other law may be applicable, Plaintiffs and the Class Members hereby agree that the provisions of Section 1542 and all similar federal or state laws, rights, rules or legal principles of any other jurisdiction which may be applicable herein are hereby knowingly and voluntarily waived and relinquished by Plaintiffs and the Class Members, and Plaintiffs and the Class Members hereby agree and acknowledge that this is an essential term of this Release.

5. Enforcement of the Settlement Agreement. Nothing in this Release shall preclude any action to enforce the terms of this Settlement Agreement, including participation in the Claim Process or other activity detailed herein.

6. Essential Term. Plaintiffs and the Class Members hereby agree and acknowledge that the provisions of this Release constitute an essential term of the Settlement Agreement.

B. Assignment of Released Claims. Effective upon the Final Settlement Date, the Plaintiffs and the Class Members do hereby convey, transfer and assign to AmerUs and its successors and assigns, all claims, potential claims, and causes of action released herein (the "Assigned Claims"), Notwithstanding any provision of the Release to the contrary. AmerUs shall be entitled, in its sole discretion, to seek recovery on the Assigned Claims from any Releasee, and the Release contained herein shall not be construed to

prejudice the right of AmerUs to recover on the Assigned Claims.

C. Contractual Rights. Nothing herein shall be deemed to alter a Class Member's contractual rights (except to the extent that such rights are altered or affected by the election and award of benefits under this Settlement Agreement) to make a claim for contractual benefits that will become payable in the future pursuant to the express written terms of any Policy contract issued by AmerUs; provided, however, that this provision shall not entitle a Class Member to assert claims which relate to the allegations contained in the Lawsuit or to the matters described in this Section

D. Exception. This release of claims shall not release any claim by or on behalf of HeritageFlex or SurvivorFlex policyowners against Releasees regarding the allegation, which AmerUs and its Affiliates deny, that AmerUs or its Affiliates improperly passed through to the HeritageFlex or SurvivorFlex policyowners increased taxes that insurance companies were required to pay under the Omnibus Budget Reconciliation Act of 1990, which taxes are commonly referred to as "Deferred Acquisition Cost" or "DAC" taxes.

IV. ATTORNEYS' FEES AND EXPENSES

A. Fees From AmerUs.

1. AmerUs agrees not to oppose an application by Settlement Class Counsel for an award of attorneys' fees in the amount of Three Million Dollars ($3,000,000) plus documented costs and expenses of up to Two Hundred Thousand Dollars ($200,000). Settlement Class Counsel will not seek fees and expenses in excess of those amounts.

AmerUs agrees to pay to Settlement Class Counsel the amount of said attorneys' fees and expenses awarded by the Court, not to exceed the above-stated amounts, without any interest, within ten (10) business days after the Final Settlement Date. Such amount shall be wire transferred into a special account to be established by Settlement Class Counsel at First Bank and Trust in Beaumont, Jefferson County, Texas. Settlement Class Counsel shall be responsible for allocating and making a final distribution of such amount.

2. The agreement of AmerUs to pay such fees and expenses will not affect or reduce the available benefits to be provided to the Settlement Class under the terms of this Settlement Agreement.

B. Expenses.

1. AmerUs will pay the following costs related to the settlement processes set out in this Agreement, including the costs and expenses related to:

a. The printing, mailing, remailing (as required herein) and handling of the Class Notice, Post-Settlement Notice, Requests for Proof of Claim, Proof of Claim and Agent Questionnaire, and other documents relevant to the Claim Process, including all personnel and operating costs, telephone, lock box, and other related costs;

b. The assembling of the Claim Files;

c. The processing of the Proofs of Claim, Agent Questionnaires, Requests for Exclusion and other documents submitted by Class Members and agents;

d. The activities of the Claim Review Team(s), including the preparation and mailing of Notices of Determination; and

e. The activities of the Member Representative and the Independent Arbiter in accordance with this Settlement Agreement, together with reasonable expenses associated therewith.

2. AmerUs will not be responsible for the costs incurred by any Class Member in connection with participating in the settlement hereunder or in the Claim Process, including without limitation copying, postage and the fees of counsel individually retained by them.

C. No Liability. Neither AmerUs nor any of its past, present or future Affiliates shall be liable or obligated to pay any fees, costs or expenses to or incur any expenses on behalf of, any person, either directly or indirectly in connection with this Lawsuit or this Settlement Agreement, other than the amount or amounts described in paragraphs IV.A. and B. of this Settlement Agreement-

D. Fees From Appellants. AmerUs and the Plaintiffs further agree that if any Class Member unsuccessfully appeals the Court's order approving this Settlement Agreement, and the appeals court finds that the appeal is frivolous, then Settlement Class Counsel shall recover from the appellant and/or the appellant's counsel their reasonable attorneys' fees and expenses for handling the appeal. AmerUs shall have the right to defend the Final Order and Judgment on appeal, but shall have no responsibility or obligation whatsoever with respect to the fees or expenses described in this Section IV.D.

E. Release of Attorneys' Liens. Settlement Class Counsel release and warrant and represent that there are no attorneys' liens arising in connection with this Settlement Agreement or against AmerUs or its subsidiaries.

V. CERTIFICATION. NOTICE AND APPROVAL PROCESS

A. Preliminary Approval and Certification. Within five (5) days after the execution of this Settlement Agreement, the parties will apply to the Court for entry of the Preliminary Order.

B. Class Notice.

1. Following entry of the Preliminary Order, AmerUs will mail the Class Notice by first class mail, postage prepaid, to the Class Members at their last known addresses at least 60 days before the Fairness Hearing. In addition, AmerUs will publish notice of this Settlement Agreement, in substantially the form attached hereto as Exhibit K, in the national editions of *The Wall Street Journal* and *USA Today* one day per week for four consecutive weeks beginning at least 60 days prior to the Fairness Hearing.

2. Because the Class Notice will be mailed to more than 130,000 Class Members, and because AmerUs will also provide the above described publication notice, AmerUs shall not be required to mail additional rounds of Class Notices or to remail any returned Class Notices except such returned notices as include a forwarding address and are received by AmerUs at least 25 days before the Fairness Hearing. If any Class Notice is returned 25 days or more before the Fairness Hearing, AmerUs shall use reasonable

diligence to forward the notice to the potential Class Member.

3. AmerUs will establish a toll-free telephone number, which will be set forth in the Claims Notice, to handle inquiries that may arise from the Class Notice.

C. Request for Exclusion.

1. Any person who would otherwise be a Class Member may be excluded from the Settlement Class and from the settlement set forth herein by mailing a written Request for Exclusion to Settlement Class Counsel in care of the lock box rented for that purpose pursuant to the Preliminary Order, postmarked no later than 15 days before the date of the Fairness Hearing, or as the Court may otherwise direct. The original Requests for Exclusion shall be filed with the Court by Settlement Class Counsel at least three business days before the Settlement Hearing. A Class Member filing such a request shall be deemed excluded from the Settlement Class with respect to all Policies owned by the Class Member. If one owner of a Policy having multiple owners files a Request for Exclusion, all joint owners shall be deemed excluded with respect to such Policy.

2. Any potential Class Member who does not file a timely written Request for Exclusion as provided in the preceding Section shall be bound by all subsequent proceedings, orders and judgments in this Lawsuit, even if the Class Member has pending or subsequently initiates litigation against AmerUs relating to any Policy and/or the Released Transactions.

D. Objection to Settlement.

1. Any Class Member who has not filed a written Request for Exclusion and who wishes to object to the fairness, reasonableness or adequacy of this Settlement Agreement or the proposed settlement must serve on Settlement Class Counsel and counsel for AmerUs and file with the Court, no later than 15 days before the date of the Fairness Hearing or as the Court may otherwise direct, a notice of intention to appear and/or object, together with copies of any papers such Class Member intends to present to the Court in connection with such objection. Class Members may make such appearances or objections either on their own or through attorneys hired at their own expense. If an attorney will represent any such Class Member, he or she must (i) file a notice of appearance with the Court no later than 15 days before the Fairness Hearing or as the Court otherwise may direct, and (ii) serve on Settlement Class Counsel and counsel for AmerUs a copy of the same. Any such Class Member or counsel thereto may obtain access, at the offices of Ethan Shaw in Beaumont, Texas, to the deposition transcripts and attached exhibits generated in this Lawsuit by entering into the confidentiality agreement in the form annexed hereto as Exhibit L. Settlement Class Counsel will inform counsel for AmerUs promptly of any requests by Class Members or their attorneys for access to such documents.

2. Only those Class Members who follow the procedures set forth in the foregoing section may appear at the Fairness Hearing and/or have their objections considered by the Court.

3. Any Class Member who does not appear individually or through counsel and/or who does not challenge or comment upon the fairness and adequacy of this Settlement Agreement as provided in this Section V.D. shall waive and forfeit any and all rights that he or she may

have to appear separately and/or object. All Class Members (whether or not they object to the fairness of this settlement) shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and Judgments in this Action.

E. Final Approval and Certification. At or after the Fairness Hearing, and upon the Court's final approval of this Settlement Agreement, the Final Order and Judgment shall be entered.

F. Post-Settlement Notice. Within thirty (30) days after the Final Settlement Date, AmerUs will mail the Post-Settlement Notice to Class Members at their last known addresses. AmerUs will establish a toll-free telephone number, which will be set forth in the Post-Settlement Notice, to handle inquiries that may arise from the Post-Settlement Notice.

G. Termination of Settlement Agreement.

1. Bilateral Right to Terminate

a. Either the Plaintiffs or AmerUs may terminate this Settlement Agreement prior to the Final Settlement Date at its or their sole option and discretion by providing written notice of termination to counsel for the other party if:

(1) The Court or any appellate court(s) rejects, modifies or denies approval of any portion of this Settlement Agreement including without limitation the terms of the Basic Relief or Special Relief, provisions relating to notice, the definition of the Settlement Class, and the Release; or

(2) The Court or any appellate court(s) does not enter or affirming all respects any portion of the Final Order and Judgment.

b. Notwithstanding any provision of this Settlement Agreement to the contrary, the Plaintiffs will not terminate this Settlement Agreement because of the amount of attorneys' fees and expenses awarded by the Court or any appellate court(s), or the failure of the Court or any appellate court(s) to approve any prevision of Section IV of this Settlement Agreement.

2. AmerUs' Right to Terminate. AmerUs may unilaterally, in its sole discretion, withdraw from and terminate this Settlement Agreement at any time prior to the Final Settlement Date by providing written notice of termination to Settlement Class Counsel if more than 2,000 Class Members in the aggregate file Requests for Exclusion or, as to any type of Policy listed in Exhibit B hereto, 300 Class Members file Requests for Exclusion.

3. No Obligation to Exercise Right. If an option to withdraw from and terminate this Settlement Agreement arises under this Section, neither of the parties is required for any reason or under any circumstance to exercise that option.

4. Effect of Termination. If this Settlement Agreement is terminated pursuant to this Section V.G., then:

a. This Settlement Agreement shall be null and void and shall have no force or effect, and no party to this Settlement Agreement shall be bound by any of its terms, except for the terms of this Section V.G. and Section VI.F. hereof;

b. This Settlement Agreement, all of its provisions (including, without limitation, any provision regarding class certification), and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of any of the settling parties (including without prejudice to AmerUs in defending against a contested class certification or the merits of any claim), and each of them shall be restored to their respective positions existing immediately before the negotiation and execution of this Settlement Agreement; and

c. Any order or judgment entered after the date of this Settlement Agreement, including, without limitation, any order certifying the class, will be vacated and will be without any force or effect and, if necessary, the parties hereto shall jointly petition the Court and use their best efforts to assure that any such order or judgment is promptly vacated.

VI. MISCELLANEOUS.

A. Insurers Not Released. By execution hereof, AmerUs does not intend to release any claim against any insurer for any cost or expense hereunder, including attorneys' fees and costs.

B. Payment to Class Representatives. AmerUs agrees to pay each of the Plaintiffs Seven Thousand Five Hundred Dollars ($7,500) within thirty (30) days of the Final Settlement Date as compensation for their time, attention, inconvenience and any out-of-pocket expense incurred serving as class representatives.

C. Return of Documents. Within ten (10) business days after the Final Settlement Date, Plaintiffs and Settlement Class Counsel will return to AmerUs's counsel

or, at the option of AmerUs' counsel, destroy all documents produced by AmerUs in this Lawsuit, as well as the transcript of any deposition testimony provided by AmerUs or its current or former employees or agents, and any exhibits to those depositions. In addition, AmerUs may, subject to the approval of the Court, retrieve from the files of the Court any certified copies of public documents or any original deposition, transcript of testimony or sworn statement, or any copies thereof, of AmerUs' current or former employees or agents, as well as any exhibits to that testimony.

D. Interests of the Class. Settlement Class Counsel and the Plaintiffs represent that they are seeking to protect the interests of the entire class and believe that this Settlement Agreement is in the best interests of the Settlement Class. The Plaintiffs each agree not to request exclusion from the Settlement Class nor to object to the proposed settlement.

E. Right to Communicate.

1. AmerUs expressly reserves the right to communicate orally and in writing with, and to respond to inquiries from, potential Class Members, Class Members and other present and former policyowners concerning their Policies and this settlement, and AmerUs may do so through any appropriate employees, personnel, agents, brokers, general agents, attorneys or other representatives. AmerUs will educate its sales representatives about the Lawsuit and the proposed and/or final settlement to enable sales representatives to provide accurate and appropriate answers to inquiries about the proposed and/or the final settlement.

2. AmerUs, Plaintiffs and Settlement Class Counsel agree that they will, and they will direct their employees, personnel and agents to, direct inquiries concerning the settlement to the specially trained representatives at the "800" number established by AmerUs for the purpose of responding to such inquiries. The parties will use good faith efforts to prevent systematic efforts to either discourage or encourage Class Members to assert claims in the Claim Process and to participate in the settlement processes. The parties will not, except through the specially trained representatives at the "800" number, provide assistance to Class Members in completing the Proof of Claim or in providing support for such claims.

F. Non-Discrimination.

1. Nothing in this Settlement Agreement shall prevent AmerUs from adjusting future dividends or dividend scales; provided that, except as expressly provided as part of any remedy provided hereunder, AmerUs agrees that:

a. AmerUs will not adjust the dividends for any individual Class Member differently from the rest of the Settlement Class based on the Class Member's election to receive relief through this settlement; and

b. AmerUs will not, based solely on this settlement, adjust dividends for the Policies which are included in the Settlement Class differently from its other traditional whole life policies.

2. The board of directors of AmerUs retains and may exercise its full discretion under the law in determining divisible surplus and in setting and paying dividends. Mere proof that AmerUs changed its dividend scale and that the

impact of such change on Policies within the Settlement Class was substantially equal to the cost of this settlement shall be insufficient to prove a violation of the agreements set forth in this Section VI.F.

G. No Evidence. In no event shall this Settlement Agreement, any of its provisions or any negotiations, statements or proceedings relating to it in any way be construed as, offered as, received as, used as or deemed to be evidence of any kind in the Lawsuit, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Settlement Agreement. Without limiting the foregoing, neither this Settlement Agreement nor any related negotiations, statements or proceedings shall be construed as, offered as, used as, or deemed to be evidence, or an admission or concession by any person of any matter, including but not limited to any liability or wrongdoing on the part of AmerUs, Plaintiffs or the Class Members, or as a waiver by AmerUs, Plaintiffs or the Class Members of any applicable defense, including without limitation, any applicable statute of limitations, or as evidence of the appropriateness of certification of any class or of defenses against any such certification.

H. No Concession. AmerUs expressly denies any wrongdoing alleged in the Lawsuit and does not concede any wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against them in this Lawsuit. Plaintiffs do not concede that any of the claims alleged in the Lawsuit lack merit.

I. Rservation of Rights. AmerUs specifically reserves the right, and Plaintiffs and Settlement Class Counsel acknowledge and agree that AmerUs shall retain any right, but shall have no obligation under this Agreement, (1) to

respond to policyowner claims in the ordinary course of business, including without limitation the defense or settlement of claims and/or complaints asserted before the Final Settlement Date or claims made by members of the Settlement Class who file Requests for Exclusion; and (2) to respond to claims or complaints of policyowners (including Class Members) which do not meet the qualifications set forth in this Settlement Agreement, to compromise such claims in its sole and absolute discretion, and to provide such relief, whether identical to or different from the relief provided hereunder, as it may in its sole and absolute discretion determine.

J. Settlement Value Review. Whereas AmerUs estimates that the value of the Basic Relief benefits available to Class Members exceeds $48.5 million, Settlement Class Counsel has engaged a qualified expert to verify this estimate. AmerUs will cooperate with and furnish to the expert information reasonably requested by the expert and which the expert requires to verify the estimate of total available benefits. Verification shall be completed at or before the date set for the Fairness Hearing. The above estimate is not a guaranty of the total value of available benefits that will be actually received by Class Members, which value may be more or less than the estimate.

K. Entire Agreement. This Settlement Agreement sets forth the entire agreement among the settling parties and may not be altered or modified except by written instrument executed by Settlement Class Counsel and AmerUs, and there are no other representations or warranties between the settling parties relating to the subject matter of this Settlement Agreement that are not contained in this Settlement Agreement.

L. Choice of Law. This settlement Agreement shall be governed by the laws of the State of Texas, and the Court shall have exclusive jurisdiction over and venue of any actions arising from or related to this Settlement Agreement.

M. Notice. Whenever this Settlement Agreement requires or contemplates that one party shall have or may give notice to counsel for the other, notice shall be provided as follows:

1. If to counsel for AmerUs, then to:

   Shannon H. Ratliff
   McGinnis, Lochridge & Kilgore LLP
   919 Congress Avenue, Suite 1300
   Austin, Texas 78701

2. If to Settlement Class Counsel, then to:

   Jerry L. Bryan II
   Law Offices of Jerry L. Bryan II
   3700 Buffalo Speedway, Suite 520
   Houston, Texas 77098

   And to:

   Ethan L. Shaw
   Moore, Landrey, LLP
   390 Park Street, Suite 500
   Beaumont, Texas 77701

N. Postmarks. Whenever a Class Member is required to provide notice or submit materials by a certain date, the notice or submission shall be timely only if it is actually received by the intended recipient on or before the date it is due or if it is postmarked, properly addressed to the

intended recipient, on or before the date it is due. For purposes of computing deadlines hereunder, any notice provided hereunder shall be presumed to have been received three days after it is placed in the U.S. mail, postage prepaid, and addressed to the intended recipient.

O. Extensions. Settlement Class Counsel and counsel for AmerUs reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement Such extensions must be in writing, signed by Settlement Class Counsel and counsel for AmerUs, and approved by the Court to be enforceable.

P. Time Periods. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday or a legal holiday or, when the act to be done is the filing of a paper in court, a day on which such court is closed, in which event the period shall run until the end of the next day that is not one of such days.

Q. Unambiguous Contract. All parties agree that this Settlement Agreements clear and unambiguous and was drafted by counsel for the parties at arms length, and that no parole or other evidence may be offered to explain, construe, contradict or clarify its terms, its intent or the circumstances under which it was made or executed. The parties hereto have worked closely together in drafting, negotiating and reviewing this Settlement Agreement, and therefore acknowledge and agree that any rule of

construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Settlement Agreement.

R. Counterparts. This Settlement Agreement may be signed in counterparts, each of which constitutes a duplicate original.

S. Further Assurances. The settling parties agree that, upon the request of either one of them, they will execute and deliver such further documents and undertake such further action as may be reasonably required to effect any of the agreements and covenants contained in this Settlement Agreement.

T. Parties Bound. This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiffs, Class Members, Settlement Class Counsel, AmerUs and its Affiliates, and the respective heirs, successors and assigns of each of the foregoing.

AGREED TO THIS 23RD DAY OF MAY, 1997.

FOR THE PLAINTIFFS AND CLASS MEMBERS:

s/Brian Cozad
Brian Cozad, Individually and on behalf of the Settlement Class

s/ Wendy Cozad
Wendy Cozad, Individually and on behalf of the Settlement Class

s/ Merle S. Baker
Merle S. Baker, Individually and on behalf of the Settlement Class

s/ Joanne Baker
Joanne Baker, Individually and on behalf of the Settlement Class
LAW OFFICES OF JERRY L. BRYAN II

BY: s/ Jerry L. Bryan II
Jerry L. Bryan II
TBA#03271000
3700 Buffalo Speedway. Suite 520
Houston, Texas 77098
Telephone: (713) 961-0950
Facsimile: (713) 961-0995

MOORE, LANDREY LLP
BY: s/Ethan L. Shaw
Ethan L. Shaw
TBA #18140480
390 Park Street, Suite 500
Beaumont, Texas 77701
Telephone: (409) 835-3891
Facsimile: (409) 835-4525

FOR AMERUS:

AMERUS LIFE INSURANCE COMPANY

By: s/Gary R. McPhail
Name: Gary R. McPhail
Title: President

MCGINNIS, LOCKRIDGE & KILGORE LLP
By: s/ Shannon H. Ratliff
Shannon H. Ratliff
TBA#_____
1300 Capitol Center

919 Congress Avenue
Austin, Texas 78701
Telephone: 512/495-6000
Facsimile: 512/495-6093

EXHIBIT A
to Settlement Agreement
Case No, 95-11315, *Cozad v. American Mutual Life*

SPECIAL RELIEF RULES

I. INTRODUCTION

A. Claims submitted to the Claim Process will be reviewed to determine whether they meet the qualifications for Level One, Level Two or Level Three of Special Relief as set forth in Sections III, IV and V below. A claim will be tested by and must meet each and every one of the specified qualifications for the Level in which it is classified.

B. The relief available at each level is specified in Sections III, IV and V below, and the types of relief are more specifically described in Section VI below. As a prerequisite to receiving a particular type of relief, the Class Member must accept all of the terms and conditions associated with that relief.

C. A claim which includes the written documents needed to qualify for Level Three but does not meet some other applicable qualification(s) for relief in Level Three will receive relief in the highest level (Level One or Level Two) in which the claim meets the qualification requirements, if at all. If such claim does not satisfy the qualifications for Level One or Level Two as provided herein, such Class Member will be entitled to Basic Relief. For all other claims, if the claim does not satisfy all the qualifications for any level of Special Relief, the Class Member will not receive any relief.

II. DEFINITIONS

In addition to terms defined in the Settlement Agreement or elsewhere in this Exhibit A, the following defined terms are used herein:

A. Acceptable Proof. "Acceptable Proof" refers to information submitted by a Class Member as part of the Proof of Claim and/or in the form of Available Documents to support a claim made in the Claim Process. If the information so submitted is complete, unequivocal and internally consistent, and is not directly contradicted by Available Documents or the Agent Questionnaire, then such information will be deemed to constitute acceptable proof of the specified matter relating to such claim. If the information so submitted is incomplete, equivocal or internally inconsistent, or if such direct contradiction exists, then it will be a question for the decision maker (i.e., the Claim Review Team, the Member Representative and the Independent Arbiter, as applicable) whether the Claim File, taken as a whole, contains acceptable proof of such matter.

B. Experienced Vanish Point. "Experienced Vanish Point" means the beginning of the first policy year for which the outlay column on an in force projection, prepared using AmerUs' dividend scale in effect as of the Settlement Date and prepared in a manner consistent with the Vanishing Premium Illustration originally provided to the policyowner, indicates no out-of-pocket premium outlay by the policyowner.

C. Interest Rate. "Interest Rate" means an interest rate of four percent (4%) per annum.

D. Investment Claims. "Investment Claims" refers to claims which satisfy the qualifications set forth in either Section IV.C. or Section V.C. hereof.

E. Limitations Date. The "Limitations Date" will be determined for any Class Member based on the state in which the Class Member's claim arose, and will be as set forth opposite the name of such state in the Limitations Date Summary which shall be adopted as Annex 1 hereto at least 30 days prior to the Fairness Hearing.

F. Originally Illustrated Vanish Point. The "Originally Illustrated Vanish Point" means, for any Policy which was illustrated with a Vanishing Premium Illustration, the beginning of the first policy year for which the outlay column of such original illustration indicates no out-of-pocket premium outlay by the policyowner.

G. Permanent Vanish. "Permanent Vanish" refers to the relief described as such in Part VI hereof.

H. Policyowner. The term "policyowner" refers to the Class Member and any prior owner(s) of a Policy, collectively or individually as the context may require. Where a Class Member has not been the sole owner of a Policy, references herein to an action involving or the knowledge of the "policyowner" at a particular time refer to the person or entity who was the owner of the Policy at such time.

I. Policy Value Supplement. "Policy Value Supplement" refers to the relief described and defined as such in Part VI hereof.

J. Premium Cost Supplement. "Premium Cost Supplement" refers to the relief described as such in Part VI hereof.

K. Premium Vouchers. "Premium Vouchers" refers to the relief described as such in Part VI hereof.

L. Reinstatement Loan. "Reinstatement Loan" refers to the relief described as such in Part VI hereof.

M. Rescission in Full. "Rescission in Full" refers to the relief described as such in Part VI hereof.

N. Rescission Less Insurance Charges. "Rescission Less Insurance Charges" refers to the relief described as such in Part VI hereof.

O. Replacement Claims. "Replacement Claims" refers to claims which satisfy the qualifications set forth in Section III.B., Section IV.B. or Section V.B. hereof.

P. Vanishing Premium Claims. "Vanishing Premium Claims" refers to claims which satisfy the qualifications set forth in Section III.A., Section IV.A. or Section V.A. hereof.

III. QUALIFICATIONS AND RELIEF FOR LEVEL ONE

A. Vanishing Premium Claims. Claims as to which the following qualifications are satisfied will be classified in Level One:

1. The policyowner initially elected and maintained, at least until the Originally Illustrated Vanish Point, a dividend option on the Policy of paid-up additions, accumulate at interest, or any one-year term option

with balance to paid-up additions or accumulate at interest;

2. The Class Member submits Acceptable Proof that the policyowner (A) received a Vanishing Premium Illustration dated prior to November 1992 (or a Vanishing Premium Illustration dated in or after November 1992 which was created using a version of AmerUs' illustration software issued prior to October 1992, which illustration is among the Available Documents) and (B) would not have purchased the Policy but for the Vanishing Premium Illustration, intended to "vanish" the premium at the date illustrated, and was not advised and did not understand that there were any conditions to the illustrated ""vanish" date;

3. The policyowner has paid, or the policyowner will be required to pay, at least one out-of-pocket premium beyond the Originally Illustrated Vanish Point to reach the Experienced Vanish Point;

4. The Policy (including any riders) remained In Force and out-of-pocket premiums (other than a maximum of one premium which was paid by an automatic premium loan described in Section IILA.5.b. below) were paid as illustrated in the Vanishing Premium Illustration originally delivered to the policyowner until the latest of:

    a. the Limitations Date; or

    b. the first date on or after January 1, 1987 on which AmerUs' in force projection system would have reflected a dividend scale change

which occurred following issuance of the Policy;

5. No policy loan or withdrawal of policy values has been made other than:

   a. as originally illustrated in a Vanishing Premium Illustration, as demonstrated by Available Documents; or

   b. a maximum of one automatic premium loan taken prior to the Originally Illustrated Vanish Point, in the maximum amount of one annual premium, which loan was repaid in full, with interest, within one year of the date of such loan; or

   c. automatic premium loans made after the Originally Illustrated Vanish Point; or

   d. withdrawal of policy values after the Originally Illustrated Vanish Point pursuant to an election to participate in AmerUs' "Value Pay" program (or as part of a regular pattern in which dividends and/or paid-up additions values were used to pay premiums after the Originally Illustrated Vanish Point);

6. The policyowner did not sign an election to participate in AmerUs' "Value Pay" program prior to the Limitations Date or, if the Policy was issued after the Limitations Date, at or substantially contemporaneous with the Policy's issue date;

7. Available Documents do not demonstrate that, prior to the Limitations Date or, if the Policy was issued

after the Limitations Date, at or substantially contemporaneous with the Policy's issue date,

a. the policyowner was advised (via some document other than a policy illustration delivered at point of sale which was based on AmerUs' then current dividend scale) that dividend scales and/or the Originally Illustrated Vanish Point were not guaranteed and/or that the number of out-of-pocket premiums could and/or would increase; or

b. a reproposal or in force projection showing premiums beyond the Originally Illustrated Vanish Point was delivered to the policyowner;

8. A complaint or claim relating to the sale of the Policy has not been previously (either with or without a release) (i) resolved by AmerUs through action beyond the basic contract terms; or (ii) submitted to or addressed by any state insurance department and resolved through action beyond the basic contract terms; or (iii) the subject of any litigation or other adjudicatory action which has been concluded as of the Final Settlement Date; and

9. The policyowner has not made a policy modification (including without limitation adding a rider, changing the face amount of the Policy, changing the insured) subsequent to policy issuance which changed the premiums payable, except where

a. the policyowner obtained a "vanishing premium" in force projection at the time of such policy modification; and

b. such projection is among the Available Documents (in which case such projection will be considered the Vanishing Premium Illustration originally delivered for purposes of applying the qualifications set forth herein).

B. Replacement Claims. Alternatively, claims as to which the following qualifications are satisfied will be classified in Level One:

1. The Class Member submits Acceptable Proof that (A) the Policy replaced an existing whole life or universal life insurance policy (whether or not issued by AmerUs), (B) the policyowner was induced by the policyowner's agent to make such replacement, and (C) such agent made a material misrepresentation, which was not corrected prior to or substantially contemporaneous with issuance of the Policy, with respect to the relative benefits and costs of the replaced policy and the Policy;

2. The replaced policy had been in force for no more than three years;

3. The face amount of the Policy was equal to the face amount of the replaced policy and no other significant differences in the structure and/or benefits of the two policies exist which would support the appropriateness of such replacement; and

4. A complaint or claim relating to the sale of the Policy has not been previously (either with or without a release) (i) resolved by AmerUs through action

beyond the basic contract terms; or (ii) submitted to or addressed by any state insurance department and resolved through action beyond the basic contract terms; or (iii) the subject of any litigation or other adjudicatory action which has been concluded as of the Final Settlement Date.

C. Investment Claims. No Investment Claims will be classified in Level One.

D. Level One Relief. When a claim is classified in Level One, the Class Member owning the Policy which is the subject of that claim will be entitled to the relief identified below, if any, depending on the status of the Policy and the insured as of the date such relief is elected:

1. If the Policy is In Force at such date:

   a. For Vanishing Premium Claims in Level One, the Class Member may elect one of the following;

      (1) A Reduced Rate Policy Loan (as described in Section II.A.3.a. of the Settlement Agreement); or

      (2) Policy Value Supplement at 35%; or

      (3) Premium Vouchers at 10%.

   b. For Replacement Claims in Level One, Premium Cost Supplement at 10%.

2. If the Policy is Terminated and the Class Member is alive, the Class Member may obtain a New Policy Contribution or a New Annuity Contribution (as described in Sections II.A.3.b. and c. of the

Settlement Agreement) upon the purchase of a qualifying new life insurance policy or annuity, respectively. Alternatively, at the option of the Class Member whose Policy has lapsed within five years prior to the Final Settlement Date for nonpayment of premiums, if the Policy is insured is still alive the Class Member may, upon reinstatement of the Policy in accordance with the terms of the Policy (including without limitation terms requiring the submission of evidence of insurability satisfactory to AmerUs), obtain any of the relief available for In Force Policies qualifying on the basis of such claim as provided above,

3. If the Policy is Terminated and the Class Member is deceased, no relief will be available.

IV. QUALIFICATIONS AND RELIEF FOR LEVEL TWO

A. Vanishing Premium Claims. Claims as to which the following qualifications are satisfied will be classified in Level Two:

1. Each and every one of the qualifications set forth in Part A of Level One is satisfied;

2. The Class Member submits Acceptable Proof that a statement made to the policyowner by AmerUs or its authorized agent prior to but substantially contemporaneous with the time the Policy was purchased constituted one or more of the following:

   a. an unambiguous guarantee of the dividends and/or rate of return projected in any illustration or other sales material; or

b. an unambiguous guarantee, promise or assurance with respect to the accumulation of values or the cessation of out-of-pocket premium payments which, in reality, would be achieved only if the projected dividend scales remained unchanged; and

3. The Policy's performance or values are materially inconsistent with such guarantee or assurance; and

4. Available Documents do not demonstrate that, prior to the Limitations Date or, if the Policy was issued after the Limitations Date, at or substantially contemporaneous with the Policy's issue date, the policyowner took actions that demonstrate a lack of belief in or reliance on the supposed guarantee.

B. Replacement Claims. Alternatively, claims as to which the following qualifications are satisfied will be classified in Level Two:

1. The Class Member submits Acceptable Proof of an unambiguous statement made to the policyowner by AmerUs or its authorized agent, in connection with the replacement of an existing whole life or universal life insurance policy (whether or not issued by AmerUs) with the Policy, which statement:

   a. induced the policyowner to make such replacement; and

   b. constituted a material misrepresentation (affirmatively or by omission), which was not corrected prior to or substantially contemporaneous with issuance of the Policy,

with respect to the relative benefits and costs of the replaced policy and the Policy; and

2. Available Documents demonstrate that no reasonable basis for such replacement existed; and

3. A complaint or claim relating to the sale of the Policy has not been previously (either with or without a release) (i) resolved by AmerUs through action beyond the basic contract terms; or (ii) submitted to or addressed by any State insurance department and resolved through action beyond the basic contract terms; or (iii) the subject of any litigation or other adjudicatory action which has been concluded as of the Final Settlement Date.

C. Investment Claims. Alternatively, claims as to which the following qualifications are satisfied will be classified in Level Two:

1. The policyowner initially elected and thereafter maintained a dividend option on the Policy of paid-up additions, accumulate at interest, or one-year term with balance to paid-up additions or accumulate at interest;

2. The Class Member submits (A) copies of sales materials in which the Policy is presented as an investment or retirement vehicle without using words such as "life insurance," "life policy," "premium" or "death benefit" and (B) Acceptable Proof that the policyowner did not realize the Policy involved life insurance, did not receive other sales materials or a policy illustration at or prior to the time of sale which stated or would reasonably be interpreted to show that the Policy was life

insurance, and did not receive delivery of the Policy contract;

3. No medical or paramedical examination, telephone medical interview or other medical investigation (beyond the basic questions in the policy application) was performed as part of the policy underwriting process at the inception of the Policy;

4. Available Documents do not reflect that, prior to the Limitations Date or, if the Policy was issued after the Limitations Date, at or substantially contemporaneous with the Policy's issue date,

   a. the policyowner knew or should have known that the Policy involved life insurance; or

   b. the policyowner took an action (such as electing Value Pay, adding a rider, changing the face amount of the Policy, applying for waiver of premium, changing the insured, requesting reproposals, making a collateral assignment or transferring the policy by gift or sale) that would demonstrate the policyowner's awareness that the Policy involved life insurance; or

   c. the policyowner received a document which unambiguously referred to the Policy as life insurance;

5. The Policy remained In Force and without any policy loan or withdrawal of policy values until the latest of:

   a. the Limitations Date; or

b. the first date on or after January 1.1987 on which AmerUs' in force projection system would have reflected a dividend scale change which occurred following issuance of the Policy; and

6. A complaint or claim relating to the sale of the Policy has not been previously (either with or without a release) (i) resolved by AmerUs through action beyond the basic contract terms; or (ii) submitted to or addressed by any state insurance department and resolved through action beyond the basic contract terms; or (iii) the subject of any litigation or other adjudicatory action which has been concluded as of the Final Settlement Date,

D. Level Two Relief. When a claim is classified in Level Two, the Class Member owning the Policy which is the subject of that claim will be entitled to the relief identified below, depending on the status of the Policy and the insured as of the date such relief is elected:

1. If the Policy is In Force at such date:

   a. For Vanishing Premium Claims in Level Two, the Class Member may elect one of the following:

      (1) Premium Voucher at 40%; or

      (2) Policy Value Supplement at 80%.

      In addition, if the policyowner has paid premiums out-of-pocket beyond the Originally Illustrated Vanish Point, the Class Member will also receive a Policy Value Supplement at 30%.

b. For Replacement Claims in Level Two, Premium Cost Supplement at 35%.

c. For Investment Claims in Level Two, the Class Member may elect one of the following:

(1) Policy Value Supplement at 80%; or

(2) Rescission Less Insurance Charges.

2. If the Policy is Terminated at such date. Rescission Less Insurance Charges. Alternatively, at the option of the Class Member whose Policy lapsed within five years prior to the Final Settlement Date for nonpayment of premiums, if the Policy's insured is still alive the Class Member may, upon reinstatement of the Policy in accordance with the terms of the Policy (including without limitation terms requiring the submission of evidence of insurability satisfactory to AmerUs), obtain the relief available for In Force Policies (other than Rescission Less Insurance Charges) qualifying on the basis of such claim as provided above.

V. QUALIFICATIONS AND RELIEF FOR LEVEL THREE

A. Vanishing Premium Claims. Claims as to which the following qualifications are satisfied will be classified in Level Three:

1. Each of the qualifications set forth in Part A of Level Two (including without limitation the qualifications from Part A of Level One which are incorporated therein by reference) is satisfied;

2. The statement described in Section IV.A.2. of the Level Two qualifications was delivered in writing; provided, however, that a full or partial policy illustration or ambiguous notations on a policy illustration or references to a separate illustration will not meet this qualification, nor will general references to projected value accumulations satisfy this criteria; and

3. The Class Member submits, subject to Section VII.C. hereof, a copy of the authentic writing described in the foregoing paragraph 2 as one of the Available Documents.

B. Replacement Claims. Alternatively, claims as to which the following qualifications are satisfied will be classified in Level Three:

1. Each of the qualifications set forth in Part B of Level Two is satisfied;

2. The statement described in Section IV.B.1. of the Level Two qualifications was delivered in writing; provided, however, that ambiguous notations on a policy illustration and general statements that simply fail to mention that the agent will earn a commission on such sale will not meet this qualification; and

3. The Class Member submits, subject to Section VII.C. hereof, a copy of the authentic writing described in the foregoing paragraph 2 as one of the Available Documents.

C. Investment Claims. Alternatively, claims as to which the following qualifications are satisfied will be classified in Level Three:

1. Each of the qualifications set forth in Part C of Level Two is satisfied;

2. An affirmative misrepresentation that the Policy did not involve life insurance was made in writing by AmerUs or its authorized agent to the policyowner, prior to or substantially contemporaneous with issuance of the Policy; provided, however, that general statements which simply fail to mention that a Policy is life insurance do not satisfy this qualification; and

3. The Class Member submits, subject to Section VII.C. hereof, a copy of the authentic writing described in the foregoing paragraph 2 as one of the Available Documents.

D. Level Three Relief. When a claim is classified in Level Three, the Class Member owning the Policy which is the subject of that claim will be entitled to the relief identified below, depending on the status of the Policy and the insured as of the Final Settlement Date:

1. If the Policy is In Force at such date:

   a. For Vanishing Premium Claims in Level Three, Permanent Vanish. In addition, if the policyowner has paid premiums out of pocket beyond the Originally Illustrated Vanish Point, the Class Member will also receive a Policy Value Supplement at 100%.

b. For Replacement Claims in Level Three, Premium Cost Supplement at 70%.

c. For Investment Claims in Level Three, Rescission in Full.

2. If the Policy is Terminated at such date, Rescission in Full. Alternatively, at the option of the Class Member whose Policy has lapsed within five years prior to the Final Settlement Date for nonpayment of premiums, if the Policy's insured is still alive the Class Member may, upon reinstatement of the Policy in accordance with the terms of the Policy (except as otherwise provided below), obtain the relief available for In Force Policies (other than Rescission in Full) qualifying on the basis of such claim as provided above. Policies which are the subject of claims qualifying for Level Three may be reinstated without evidence of insurability; provided, however, that:

a. Such reinstatement without evidence will be applicable only to the base policy and any riders or benefits on the life of the primary insured which, according to a Vanishing Premium Illustration submitted as an Available Document, were illustrated to continue in force at such time;

b. Reinstatement of any other riders or benefits will be permitted only with evidence of insurability; and

c. In the event that any guaranteed purchase option is reinstated, then the policyowner can exercise it as provided therein to the extent the right to do so arises on or after the effective date of such

reinstatement, but the policyowner will not have the right to exercise any option which accrued during the time the Policy was not in force.

In addition, AmerUs will make a Reinstatement Loan to assist the Class Member in reinstating any such Policy.

VI. DESCRIPTION ANP DEFINITION OF AVAILABLE RELIEF.

The relief identified above which may be available for claims qualifying within specified levels of relief is described below.

A. Permanent Vanish. For the "Permanent Vanish" relief, AmerUs will waive all out-of- pocket premiums due from the later of the date the Class Member accepts this relief and the Originally Illustrated Vanish Point for the remaining premium paying period of the Policy. This relief will be implemented at the later of the date the Class Member accepts this relief and the Originally Illustrated Vanish Point, on the following terms and conditions:

1. If at the date specified above for implementation of this relief the policyowner has not paid the full number of out-of-pocket premiums originally illustrated in a Vanishing Premium Illustration as being payable out-of-pocket by the policyowner, together with principal of and interest on any policy loan withdrawn by the policyowner from the policy values (except as otherwise illustrated in the Vanishing Premium Illustration originally provided to the policyowner), implementation of this relief will be delayed past the date specified until all such amounts have been paid out-of-pocket by the

policyowner; but if all amounts have not been paid within three years after the date so specified, AmerUs shall have no responsibility to provide this Permanent Vanish relief with respect to such Policy;

2. The policyowner will change the dividend option on the Policy to "reduce premiums, balance to paid-up additions" (or as otherwise directed by AmerUs), any waiver of premium benefit attached to the Policy will be terminated, and the policyowner will change the premium mode to "annual";

3. Unless a Vanishing Premium Illustration which is among the Available Documents shows the continuation of one or more riders beyond the Originally Illustrated Vanish Point, any level premium paid-up additions rider will be changed to a single-premium paid-up additions rider with no further premium due, and any other riders will be terminated (and, if the rider is to be continued as shown in such Vanishing Premium Illustration, it shall terminate at the point illustrated for such termination);

4. The waiver of out-of-pocket premiums will cover the Base Premium together with premiums associated with any riders (including without limitation term riders, paid-up additions riders and benefits such as accidental death benefit) that were originally issued with the Policy and are not terminated as provided above, but shall not include loan interest or any amounts payable as premiums in advance or into any premium deposit fund;

5. Any premium associated with any policy purchased by the Class Member pursuant to any guaranteed

purchase option attached to the Policy or on any policy resulting from the conversion of any term rider on the Policy will be the responsibility of the Class Member, and such premium will not be waived as part of this relief;

6. The amount payable at the death of the insured (before any deduction for loans or unpaid premiums, and exclusive of accidental death benefit amounts) will always equal at least the base face amount of the Policy at issue. For HeritageFlex or SurvivorFlex policies, the amount payable will always equal at least the amount illustrated as the death benefit payable at such time in the Vanishing Premium Illustration originally delivered to the policyowner, and will include both the base face amount and the then illustrated amount of the Additional Protection Benefit. The above amounts will be adjusted to reflect (a) any policy modifications prior to the Settlement Date that would increase such amounts; and (b) any policy modifications through the date this relief is implemented to the extent they would decrease the amounts payable;

7. AmerUs will assume the risk of future dividend reductions;

8. All Policy values will be automatically assigned to AmerUs to secure the amounts AmerUs has contributed to the Policy, plus interest as stated herein, so that in the event of a cash surrender of the Policy, or any cash withdrawal or loan which would otherwise decrease the cash surrender value to less than the amount AmerUs has contributed to the policy, plus interest as stated herein, AmerUs will receive the amount of premium it has advanced,

together with interest at the Interest Rate, and the amount payable to the policyowner will be reduced accordingly;

9. All accumulated values in the Policy (e.g., base and rider paid-up additions and dividend accumulations) as of the later of the Settlement Date and the Originally Illustrated Vanish Point, and all dividends, will be available to AmerUs to pay premiums as they become due; and

10. If, after the date this relief is implemented, the policyowner takes out any policy loans or withdraws any policy values other than as illustrated in the Vanishing Premium Illustration originally delivered to the policyowner, changes the dividend option, changes the insured, adds or deletes any riders, exercises any "split" option (applicable to SurvivorFlex policies), exercises any Living Benefit Rider, or exercises any policy or rider benefit or option that has the effect of any of the foregoing, AmerUs will have no responsibility to make any further contribution to the Policy or to continue the relief described herein, except that the assignment of values described in Section VI.A.8. hereof will continue to the extent of the sums advanced by AmerUs hereunder.

B. Policy Value Supplement. For the "Policy Value Supplement" relief, AmerUs will "contribute" to the Policy an amount equal to the stated percentage of the difference in the originally illustrated dividend on the base policy and that actually paid by AmerUs on the base policy from the period beginning at the Policy issue date and ending on the Settlement Date, on the terms and conditions set forth for Supplement Relief in Section VII.A. hereof.

C. Premium Cost Supplement. For the "Premium Cost Supplement" relief, AmerUs will "contribute" to the Policy an amount equal to the stated percentage of the first-year Base Premium actually paid by the policyowner for the Policy, on the terms and conditions set forth for Supplement Relief in Section VIIA. hereof.

D. Premium Vouchers. For the "Premium Vouchers" relief, AmerUs will waive the stated percentage of the out-of-pocket premium due from (i) the later of (A) the date the Class Member accepts this relief and (B) the Originally Illustrated Vanish Point to (ii) the Experienced Vanish Point. This relief will be implemented at the later of the date the Class Member accepts this relief and the Originally Illustrated Vanish Point, on the following terms and conditions:

1. If at the date specified above for implementation of this relief the policyowner has not paid the full number of out-of-pocket premiums originally illustrated in a Vanishing Premium Illustration as being payable out-of-pocket by the policyowner, together with principal of and interest on any policy loan withdrawn by the policyowner from the policy values (except as otherwise illustrated in the Vanishing Premium Illustration originally provided to the policyowner), implementation of this relief will be delayed past the date specified until all such amounts have been paid out-of-pocket by the policyowner, but, if all such amounts have not been paid within three years after the date so specified, AmerUs shall have no responsibility to provide this Premium Vouchers relief with respect to such Policy;

2. This relief will be effectuated through the delivery of vouchers to the Class Member, with each voucher representing the stated percentage of an annual Base Premium;

3. Only one voucher can be redeemed in any policy year, and will be effective only if accompanied by the balance of the premium payment for that policy year (over and above the percentage represented by the voucher, plus the premium for any rider or benefit not covered as part of Base Premium);

4. The vouchers are not transferable and will be effective only with respect to the Policy as to which a claim was made which qualified for this relief;

5. Where a Class Member receives multiple vouchers, the first voucher will have to be used no later than the Policy anniversary immediately after the later of the date this relief is accepted or the Originally Illustrated Vanish Point and, once the first voucher is used, any remaining vouchers held by that Class Member will have to be used, if at all, for the immediately succeeding year(s);

6. The number of vouchers to be delivered will be based upon an in force projection as of the Settlement Date, and that number will not be increased even if subsequent dividend scale changes increase the number of years of out-of-pocket premium payments required to keep the Policy in force;

7. All Policy values will be automatically assigned to AmerUs to secure the amounts AmerUs has contributed to the Policy, plus interest as stated

herein, so that in the event of a cash surrender of the Policy, or any cash withdrawal or loan which would otherwise decrease the cash surrender value to less than the amount AmerUs has contributed to the policy, plus interest as stated herein, AmerUs will receive the amount of premium it has advanced upon redemption of such vouchers, together with interest at the Interest Rate, and the amount payable to the policyowner will be reduced accordingly, and

8. If, after the date this relief is implemented, the policyowner takes out any policy loans or withdraws any policy values other than as illustrated in the Vanishing Premium Illustration originally delivered to the policyowner, changes the dividend option, changes the insured, adds or deletes any riders, exercises any "split" option (applicable to SurvivorFlex policies), exercises any Living Benefit Rider, or exercises any policy or rider benefit or option that has the effect of any of the foregoing, AmerUs will have no responsibility to make any further contribution to the Policy or to continue the relief described herein, except that the assignment of values described in Section VID.6. hereof will continue to the extent of the sums advanced by AmerUs hereunder.

E. Reinstatement Loan. For the "Reinstatement Loan" relief, AmerUs will loan to the qualifying Class Member the funds that must be paid to AmerUs to reinstate a Policy, on the following terms and conditions:

1. The amount borrowed, plus interest at the Modified Loan Rate, will be repaid by the Class Member (out-of-pocket), in regular annual or monthly installments (as selected by the Class Member), over the five

years following the effective date of reinstatement of the Policy, according to a repayment schedule to be established at the time the Policy is reinstated, and the Class Member shall additionally pay any premiums or other amounts necessary going forward in connection with the Policy; and

2. If any installment of principal and/or interest is not received by AmerUs within 20 days after it sends the policyowner notice that such amount is past due, then:

   a. All amounts so borrowed will be accelerated so that the full amount of indebtedness outstanding will be immediately due and payable;

   b. All such amounts will immediately and automatically be converted to a regular policy loan, secured by an assignment of values (if any) in the Policy, and if such values are less than the amount due, AmerUs will have the right to retain all such values and the Policy will thereupon lapse without value; and

   c. From that point on, AmerUs will discontinue and will have no responsibility to make any further contribution to the Policy or to continue any relief which would otherwise be available hereunder.

F. Rescission in Full. For the "Rescission in Full" relief, AmerUs will refund to the Class Member an amount calculated based on what was paid into and out of the Policy, on the following terms and conditions:

1. Rescission values will include premiums on the base policy and any riders or benefits providing death benefit on the primary insured, but premiums on all other riders and benefits shall be excluded;

2. Rescission values will be calculated using the assumption that all premiums paid were paid on the premium due dates applicable under the payment mode in effect at the earlier of the termination of the Policy or the Settlement Date;

3. The calculation of rescission values will be adjusted as appropriate to reflect non-level cash flows due to. for instance, the addition or deletion of riders and/or non-level premiums;

4. Rescission values will be reduced to reflect amounts paid out of the Policy at any time in the form of loans, withdrawals, surrender proceeds, dividends paid in cash and any other outflows; and

5. Interest at the Interest Rate will be paid on the net amounts payable to the Class Member, and will be based on when the amounts described in this Section VI.F. were originally received or disbursed by AmerUs.

G. Rescission Less Insurance Charges. For the "Rescission Less Insurance Charges" relief, AmerUs will refund to the Class Member an amount calculated as described for Rescission in Full, except that the cost of insurance for each policy year during which the Policy was in effect will be deducted in calculating the amounts payable hereunder, and will be based on the statutory valuation mortality assumption.

VII. OTHER TERMS AND CONDITIONS.

A. General Conditions relating to "Supplement Relief". Whenever an amount is contributed to a Policy as a Supplement (i.e., a Policy Value Supplement or a Premium Cost Supplement), the following provisions will apply:

1. The amounts described in Section VIB. or C. hereof (as applicable), multiplied by the applicable percentage stated in Sections III, IV or V hereof, is referred to herein as the "contributed amount."

2. Amounts applied to paid-up additions riders will not be taken into account in calculating the contributed amount;

3. Twelve and one-half percent (12.5%) of the contributed amount will be applied to the Policy's values via payments into a paid-up additions rider on each of the first eight Policy anniversaries which occur after the date this relief is accepted.

4. All Policy values will be automatically assigned to AmerUs to secure the amounts AmerUs has contributed to the Policy, plus interest as stated herein, so that in the event of a cash surrender of the Policy, or any cash withdrawal or loan which would otherwise decrease the cash surrender value to less than the amount AmerUs has contributed to the policy, plus interest as stated herein, AmerUs will receive the amount of premium it has advanced, together with interest at the Interest Rate, and the amount payable to the policyowner will be reduced accordingly; and

5. If, after the date this relief is implemented, the policyowner takes out any policy loans or withdraws any policy values other than as illustrated in the Vanishing Premium Illustration originally delivered to the policyowner, changes the dividend option, changes the insured, adds or deletes any riders, exercises any "split" option (applicable to SurvivorFlex policies), exercises any Living Benefit Rider, or exercises any policy or rider benefit or option that has the effect of any of the foregoing, AmerUs will have no responsibility to make any further contribution to the Policy or to continue the relief described herein, except that the assignment of values described in Section VII.A.4. hereof will continue to the extent of the sums contributed by AmerUs hereunder.

B. Assumptions Concerning Illustrations. In the event that the original Vanishing Premium Illustration for a Policy is not among the Available Documents, there will be a presumption mat the illustration originally provided to the policyowner was created using standard assumptions and utilizing AmerUs' standard illustration software approved for use by agents at the time the Policy was issued, and that the illustration was not altered by such agent. Such presumption may be overcome only by an unequivocal description in the Proof of Claim, which is not contradicted by the Agent Questionnaire or other Available Documents, and such description must contain sufficient detail to persuade the decision maker (i.e., the Claim Review Team, the Member Representative and the Independent Arbiter, as applicable) that a non-standard illustration must have been delivered. AmerUs may reconstruct a standard Vanishing Premium Illustration (using such variables as the face amount, age, sex, risk class, dividend option and other features applicable to the Policy at issue; including any

riders on the Policy at issue; and reflecting no loans against or withdrawals from such Policy) or, where such presumption is overcome, a non-standard illustration approximating as closely as possible the detail described above for such Policy. Such illustration may be made a part of the Claim File. Such illustration will be treated for all purposes as the Vanishing Premium Illustration originally provided to the policyowner for purposes of determining the Originally Illustrated Vanish Point and the Experienced Vanish Point, for purposes of determining whether certain policyowner activities were consistent with the illustration, and for any other purposes for which the original illustration is used hereunder.

C. Authentic Writings In Level Three. AmerUs reserves the right to request that the authentic original of any written statement which is the basis for the classification of a claim in Level Three be delivered to it for examination. If AmerUs makes such a request and the Class Member fails or refuses to make such original available or if upon examination such original is found not to be an authentic writing of the nature it purported to be, then the claim will be reclassified and such writing will be disregarded for purposes of reclassifying such claim.

D. Implementation of Remedies. AmerUs reserves the right to effectuate the relief provided herein through means which vary procedurally from the means described herein. For example, for the Premium Vouchers relief, instead of physically delivering the annual premium vouchers as described above, AmerUs may implement this relief through the return of an implementation form, after which the periodic billing statements will reflect for the specified number of years that a reduced percentage of premium is due and payable. Any such variance shall be limited to procedural changes which do not make it more difficult for

Class Members to receive relief and which do not affect the value or substance of the relief provided.

ANNEX 1
to Special Relief Rules
Case No. 95-11315, *Cozad v. American Mutual Life*

LIMITATIONS DATE SUMMARY
[to be appended at least 30 days
prior to the Fairness Hearing]

Appendix D

CAUSE NO. 95-11315

BRUCE C. COZAD	§	IN THE DISTRICT COURT
AND WENDY COZAD	§	
Plaintiffs,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
AMERICAN MUTUAL LIFE	§	
INSURANCE COMPANY	§	
Defendant.	§	98TH JUDICIAL DISTRICT

FINAL JUDGMENT

Came on for hearing this 16th day of September, 1997, Plaintiffs' Motion for Final Approval of Settlement Agreement and Certification of Settlement Class by Bruce C. Cozad, Wendy Cozad, Merle Baker and JoAnn Baker, Plaintiffs, individually and on behalf of the Class Members (as defined in the Order signed June 10, 1997). Based on the Findings entered by the Court on this same date, the Court concludes that this case should be certified as a class action and that the Settlement Agreement between Plaintiffs, individually and on behalf of the absent Class Members, and Defendant is fair, adequate, reasonable and in the best interests of the class and should be approved. It is, therefore:

ORDERED that this case be maintained as a class action on behalf of the following class of plaintiffs (the "Class Members"):

> All persons or entities who have, or had at the time of the Policy's termination, an ownership interest in one or more (i) individual traditional whole life insurance policies issued by Central Life Assurance

Company between January 1, 1980 and December 31, 1994 or (ii) Heritage Series individual traditional whole life insurance policies issued by American Mutual Life Insurance Company between January 1, 1995 and December 31, 1995; provided, however, that policies on which a death claim has been made prior to the Settlement Date shall be excluded from the policies enumerated above;

with respect to all claims referenced in the Settlement Agreement; and it is further

ORDERED that Bruce C. Cozad, Wendy Cozad, Merle Baker and JoAnn Baker are designated as class representatives and Jerry L. Bryan and Ethan L. Shaw are designated as counsel for the class ("Class Counsel"}; and it is further

ORDERED that the Settlement Agreement attached hereto as Exhibit "A" be and hereby is approved; and it is further

ORDERED that Defendant shall, within 30 days after the Final Settlement Date (as defined in the Settlement Agreement), cause to be mailed in the name of the clerk by first class mail, postage prepaid, to all Class Members who did not timely elect to be excluded from the class, a notice in substantially the same form attached as Exhibit "E" to the Settlement Agreement; and it is further

ORDERED that the Settlement Agreement is incorporated herein by reference and shall be part of this Order as if set out verbatim herein; and it is further

ORDERED that, without impairing the generality of the foregoing incorporation by reference of the entire Settlement

Agreement, the following Release is hereby expressly approved:

1. Release of Claims. Effective upon the Final Settlement Date, Plaintiffs and all Class Members hereby expressly agree that neither they nor any persons claiming through or on their behalf (including any insured or beneficiary of any Policy) shall now or hereafter institute, maintain or assert against AmerUs or any of its past, present or future Affiliates (collectively, the "Releasees"), either directly or indirectly, on their own behalf or on behalf of the Settlement Class or any other person or entity, and that they forever release and discharge the Releasees from, any and all causes of action, claims, damages, equitable, legal and administrative relief, interest, demands or rights (including without limitation claims for mental anguish), whether based on federal, state or local statute, ordinance, regulation, contract, common law or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiffs or any Class Member against the Releasees (or any of them) in the Lawsuit or any other court action or before any administrative body (including any state department of insurance or other regulatory body), tribunal, arbitration panel or other adjudicatory body on the basis of, connected with, arising out of, or relating to, in whole or in part, any of the following (all of which acts, omissions, facts, matters, transactions, occurrences and representations are collectively referred to as the "Released Transactions");

a. Any or all of the acts, omissions, facts, matters, transactions, occurrences, or representations that have been, could have been, may be or could be directly or indirectly alleged, asserted, described, set forth or referred to in the Lawsuit; and/or

b. Any or all of the acts, omissions, facts, matters, transactions or occurrences, or any oral or written statements or representations allegedly made in connection with or directly or indirectly relating to the marketing, solicitation, application, underwriting, acceptance, sale, purchase, operation, retention, administration, or replacement (by means of surrender, partial surrender, loans respecting, withdrawal and/or termination) of the Policies or any insurance policy or annuity replaced by or sold in connection with, or relating in any way, directly or indirectly, to the sale or solicitation of the Policies, including without limitation any acts, omissions, facts, matters, transactions, occurrences, or oral or written statements or representations relating to;

(1) The number of out-of-pocket cash premium payments that would need to be paid to keep a Policy in force and/or the amount, whether in the form of dividends, cash values, death benefit or any other benefit, that would be realized or paid under a Policy based on a fixed or limited number of out-of-pocket premium payments being made by, on behalf of or for the benefit of the Class Member (sometimes referred to as "vanishing premiums" or "disappearing premiums"); and/or

(2) The ability to keep or not to keep the Policies in force based on a fixed or limited number and/or amount of premium payments or dividend values, and/or the amount that would be realized or paid under the policies based on a fixed number and/or amount of cash payments; and/or

(3) The interest rate credited or to be credited to premiums paid on the Policies, or to amounts within the Policies, and the deductions charged or to be charged against the Policies; and/or

(4) The nature, characteristics, terms, appropriateness, suitability, descriptions and operation of the Policies; and/or

(5) The relationship between the Policies' cash surrender value and the cumulative amount of premiums paid; and/or

(6) The use of an existing policy's cash value or dividends or other values to purchase or maintain a new policy or other policy by means of a surrender, withdrawal or loan (sometimes referred to as "twisting" or "churning"); and/or

(7) The replacement of an existing life insurance policy, annuity or other financial vehicle with a new life insurance policy; and/or

(8) Whether the Policies were or were not life insurance or that Plaintiffs' or Class Members' (and/or purchasers') objectives would be funded by the cash values and/or benefits derived from a life insurance policy; and/or

(9) Whether the Policies were, would operate or could function as an investment, retirement or savings vehicle; and/or

(10) Whether a part of the premiums paid would not be credited toward an investment, retirement or savings account or the Policies' cash values, but would be used to offset AmerUs' commission, sales, administration, mortality and/or other expenses; and/or

(11) The rate of return on premiums paid in terms of cash value or cash surrender value; and/or

(12) AmerUs' dividend, interest and administrative charge policies and practices; the amount of dividends paid and/or credited; dividend scales and loan interest rate; illustrations of dividend values, cash values, loan amounts, or death benefits; or any other matters (including without limitation the effect of the "DAC" tax as described below) relating to or affecting dividends, policy values, premium charges, illustrations and/or policy loans; and/or

(13) The manner in which AmerUs and/or its Affiliates trained and supervised any of the Releasees, including but not limited to AmerUs' general agents, agents, producers, insurance brokers, solicitors and representatives, or anyone acting on behalf of or under the direction of any of the foregoing; and/or

(14) Any acts, omissions, facts, matters, transactions, occurrences, or oral or written statements or representations relating to any of the foregoing; and/or

c. Any or all acts, omissions, facts, matters, transactions, occurrences or oral or written statements or representations made or allegedly made in connection with or directly or indirectly relating to the Settlement Agreement or the settlement of the Lawsuit, except as provided in Section III-A.5. below; and/or

d. Any and all claims for attorneys' fees, costs or disbursements incurred by Lead Counsel or any other counsel representing Plaintiffs or Class Members, or by Plaintiffs or the Class Members, or any of them, in connection with or related in any manner to the Lawsuit, the settlement of the Lawsuit, the administration of such settlement and/or the Released Transactions except to the extent otherwise specified in the Settlement Agreement.

2. Release of Other Remedies. Effective upon the Final Settlement Date, the Plaintiffs and all Class Members further release and waive any claim to or right in any money damages or equitable or other relief that might be awarded or made available as a result of any action or proceeding by a department of insurance or other regulatory commission in any way arising from or relating in whole or in part to the Released Transactions.

3. Attorneys' Fees and Expenses. Without in any way limiting the scope of this Release, this Release covers, without limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Settlement Class Counsel or any other counsel representing Plaintiffs or the Class Members, or by Plaintiffs or the Class Members or any of them in connection with or relating in any manner to the

Lawsuit, the settlement of the Lawsuit, the administration of such Settlement and/or the Released Transactions, except to the extent otherwise specified in this Settlement Agreement.

4. Unknown Claims. In connection with this Release, Plaintiffs and the Class Members acknowledge that they are aware that they may hereafter discover claims or damage presently unknown or unsuspected, or facts in addition to or different from those which they now know r believe to be true with respect to the Released Transactions and all claims released herein. Nevertheless, it is the intention of Plaintiffs and the Class Members in executing this Settlement Agreement fully, finally and forever to settle and release all such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any actions). Plaintiffs and the Class Members expressly understand that Section 1542 of the Civil Code of the State of California provides that a general release does not extend to claims which a creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected the settlement with the debtor. To the extent that, notwithstanding the choice of law provisions in this Settlement Agreement, California or other law may be applicable, Plaintiffs and the Class Members hereby agree that the provisions of Section 1542 and all similar federal or state laws, rights, rules or legal principles of any other jurisdiction which may be applicable herein are hereby knowingly and voluntarily waived and relinquished by Plaintiffs and the Class Members, and Plaintiffs and the Class Members hereby agree and acknowledge that this is an essential term of this Release.

5. Enforcement of the Settlement Agreement. Nothing in this Release shall preclude any action to enforce the terms of this Settlement Agreement, including participation in the Claim Process or other activity detailed herein.

6. Essential Term. Plaintiffs and the Class Members hereby agree and acknowledge that the provisions of this Release constitute an essential term of the Settlement Agreement.

and it is further

ORDERED that Class Counsel are awarded the total sum of $3,000,000.00 as compensation; $2,700,000.00 of this total is payable within 10 business days after the Final Settlement Date (as defined in the Settlement Agreement), while $300,000.00 is payable within 10 business days after the Independent Arbiter submits his certification to the Court pursuant to paragraph 6 of the Stipulation Concerning Approval of Settlement Agreement (Exhibit "B" hereto); and it is further

ORDERED that Class Counsel be reimbursed for expenses the total sum of $105,106.66, to be paid by Defendant within 10 business days after the Final Settlement Date (as defined in the Settlement Agreement); and it is further

ORDERED that those Class Members who have filed a timely and valid request for exclusion from the settlement (identified in Plaintiffs' Exhibit Nos. 5 and 6 received into evidence at the hearing on September 16, 1997) are not bound by this Judgment nor shall they participate in the distribution of benefits under the Settlement Agreement unless they (a) waive any right to object to the Settlement Agreement and (b) withdraw their request for exclusion in writing by October 31, 1997; and it is further ORDERED that

those Class Members who have not filed timely and valid requests for exclusion from the settlement are bound by this Judgment and by the terms of the Settlement Agreement; and it is further

ORDERED that, subject to the Court's reservation of jurisdiction as specified below, this action be and hereby is dismissed with prejudice, all parties to bear their own costs except as provided in the Settlement Agreement; and it is further

ORDERED that, without affecting the finality of this Judgment, the Court shall retain jurisdiction over the settlement of this case and may enter additional ministerial orders to effectuate the fair and orderly administration of the settlement as may from time to time be appropriate; and it is further

ORDERED that all relief not expressly granted in this Final Order and Judgment is hereby denied.

Signed the 10th day of September, 1997.

s/Hon. Joe Hart
Judge Presiding

Attorney No. 50817

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

STUART KORTEBEIN, ANTIMO CANDEL, RONALD PETERS, THADDEUS PIERCE, MELVYN ROMANOFF, FEDOR BACHMAN, WILLIAM BAITINGER, CHARLES RHODES, ROBERT BABBIN, BURTON EISENBERG, JEANETTE PAGE, DAVID ROZEN, RICHARD HIRSCHTRITT, JOHN HOFF, MARTIN BLUMBURG, CHARLES EARLE, ALBERT FURMAN, HUBBARU PAGE, MAX RABIN, IAN HASKELL, SHARON HASKELL, SAUL HASKELL, MARC ENGELHART, LINDA WEBER, HARRY WEBER, KEVIN EARLE, MICHAEL TAN, STEVF-N KROLL, KEITH BOYER, ROBERT BUSSELL, RONALD PETERS, DONALD S1LVERTRUST, HOWARD WEITZMAN, MOHAMMAD FAROOQUI, LEWIS NATENSHON, LARRY GOLDSMITH, MITCHELL NAGORSKY, PAUL ADELMAN, JACQUELYN SCOTT, VANESSA EHRLICH, RONALD PETERS, SANFORD GAIL, GERALD KANDEL, MICHAEL HYMAN, and BARRY MILLMAN,	)	No. 00 CH 00932
Plaintiffs	)	
v.	)	
AMER US LIFE INSURANCE	)	

COMPANY, f/k/a AMERICAN)
MUTUAL LIFE INSURANCE)
COMPANY,)
Defendant)

SECOND AMENDED COMPLAINT

Now come the plaintiffs, by their attorneys, DE BOFSKY & DE BOFSKY, and complaining against the defendant, they state:

Facts

1. The plaintiffs, STUART KORTEBEIN, ANTIMO CANDEL, RONALD PETERS, THADDEUS PIERCE, MELVYN ROMANOFF, FEDOR BACHMAN, WILLIAM BAITINGER, CHARLES RHODES, ROBERT BABBIN, BURTON EISENBERG, JEANETTE PAGE, DAVID ROZEN, RICHARD HIRSCHTRITT, JOHN HOFF, MARTIN BLUMBURG, CHARLES EARLE, ALBERT FURMAN, ALBERT FURMAN TRUST, HUBBARD PAGE, GERALD KANDEL, MAX RABIN, IAN HASKELL, SHARON HASKELL, SAUL HASKELL, MARC ENGELHART, LINDA WEBER, HARRY WEBER, KEVIN EARLE, MICHAEL TAN, STEVEN KROLL, KEITH BOYER, ROBERT BUSSELL, RONALD PETERS, DONALD S1LVERTRUST, HOWARD WEITZMAN, MOHAMMAD FAROOQUI, LEWIS NATENSHON, LARRY GOLDSMITH, MITCHELL NAGORSKY, PAUL ADELMAN, JACQUFLYN SCOTT, VANLSSA EHRUCH, RONALD PETERS, SANFORD GAIL, GERALD KANDEL, MICHAEL HYMAN, and BARRY MILLMAN either are, or were, at all times relevant hereto, residents of the State of Illinois.

2. The defendant, AMERUS LIFE INSURANCE COMPANY f/k/a American Mutual Life Insurance Company, is and

was at all times relevant hereto authorized to and was transacting business in Cook County, Illinois, to-wit, the sale and administration of life insurance and other life sensitive investments.

3. All of the above-referenced individuals constituted persons or entities who purchased life insurance meeting one or more of the following criteria:

> an ownership interest in one or more (i) individual traditional whole life insurance policies issued by Central Life Assurance Company between January 1, 1980 and December 31. 1994 or (ii) Heritage Series individual traditional whole life insurance policies issued by American Mutual Life Insurance Company between January 1, 1995 and December 31. 1995.

4. By reason of the foregoing, each of the individuals named above became putative members of a class of persons involved in litigation titled, "Bruce C. Cozad and Wendy Cozad v. American Mutual Life Insurance Company, Cause No. 95-11315" filed in the District Court of Travis County, Texas, 98th Judicial District.

5. In approximately July 1997, the plaintiffs, and each of them were advised of a settlement of the above-referenced lawsuit and furnished with a Notice ("Notice"), a true and correct copy of which is attached 10 Plaintiff's original Complaint as Exhibit "A" and by that reference incorporated herein.

6. Relying on the information set forth in the Notice, plaintiffs and each of them elected to remain in the class and to avail themselves of the remedies afforded by virtue of the class action settlement as described in the notice.

7. The settlement of the class action as described in the Notice offered two different types of "relief": "Special Relief" and "General Relief." Entitlement to "Special Relief" was based upon claims of being "misled in connection with the sale of their Policies" (Notice at 4). General relief was available 1.0 all class members regardless of whether there were claims of being "misled in any way or that any improper sales practices occurred" (Notice at 9).

8. The Notice further provided, "Class Members who enter the Special Relief process and who do not qualify for an award of Special Relief will not obtain Basic Relief."

9. The class action suit was based upon allegations that purchasers of life insurance from AmerUs or one of its predecessors were misled about their purchases based on misrepresentations regarding premium payments, as well as misrepresentations regarding whether the insurance was purchased as life insurance or
as an investment. In many cases, the misrepresentations induced the policyholders to replace prior existing coverage that provided superior dividends or other benefits. In particular, the plaintiffs all purchased life insurance based on what is known as "vanishing premium" representations; i.e., that the insured need only pay premiums for a limited number of years—thereafter, the built up value in the policies would generate sufficient funds to continue paying premiums indefinitely. The theory behind the class action complaint was that the defendant knew, or should have known, that the "vanishing premium" illustrations were false and misleading at the time the policy illustrations were presented. Although defendant denied the allegations made in the class action complaint, AmerUs nonetheless was willing to enter into the class action settlement.

10. The information contained in the Notice was both false and misleading regarding the criteria to obtain special relief. In particular, the Notice advised prospective "Special Relief" claimants that they would receive such relief by proving they received a vanishing premium illustration, and by demonstrating they were misled.

11. Although the Notice advised that additional criteria were set forth in the "Settlement Agreement," plaintiffs were not advised of the nature of such criteria; and while the Notice provided that the Settlement Agreement was available for inspection at the offices of the Clerk of the Travis County District Court in Austin, Texas, that location was not easily accessible to any of the plaintiffs.

12. Defendant knew when it issued the Notice that potential claimants such as the plaintiffs would rely on the contents of that notice and be induced to believe that if they purchased insurance based on a vanishing premium illustration that they would qualify for "special relief," and so that they would apply for special relief, thus foregoing the basic relief.

13. It was defendant's intent that plaintiffs would be deceived by the language in the "Notice" and that plaintiffs would act upon such language to seek "special relief" and forego "basic relief."

14. At all times relevant hereto, Bruce and Wendy Cozad, the class representatives, were under a duly to adequately represent the members of the class whom they purported to represent.

15. Notwithstanding that duty, the Cozads' agreement to settle under the terms set forth in the settlement agreement gave plaintiffs reason to believe that their

interests would be adequately protected and that they would receive relief in accordance with the proposed settlement agreement.

16. As a result thereof, reasonably relying on the representations contained in the "Notice," which reasonably led plaintiffs to believe that they met the criteria for "special relief" under the terms of the class action settlement, each and every one of the plaintiffs filed claim forms seeking "special relief," and they expended substantial time and effort in completing lengthy claim forms and submitting those forms to AmerUs. By doing so, each and every one of the plaintiffs forfeited their right to general relief.

17. At all times relevant hereto, the plaintiffs were acting solely in reliance on information contained in the Notice and upon the agreement to settle entered into by the class representatives, and none of the plaintiffs were furnished with any additional criteria or qualifications necessary to receive "special relief."

18. Based upon the criteria for "special relief as generally described in the notice, each and every one of the plaintiffs reasonably believed that they qualified for such relief pursuant to the described terms of the class action settlement.

19. Notwithstanding the foregoing, plaintiffs and each of them all received determinations from AmerUs that they failed to qualify for "special relief."

20. Thereafter, each and every one of the plaintiffs appealed that determination, but were advised following the appeal that they failed to meet the criteria for "special relief" and that the determination was final and binding upon them.

21. Plaintiffs subsequently learned of a separate "Settlement Agreement," a true and correct copy of which is attached to plaintiffs' original complaint as Exhibit "B" and by that reference incorporated herein. According to the "Settlement Agreement," the criteria for "special relief" differed substantially from the description of the criteria for "special relief" set forth in the Notice; and the criteria set forth in the settlement agreement barred them from recovery, even though plaintiffs were not aware of those terms at die time they chose to forego exclusion from the class action and agreed to participate in the settlement according to the terms set forth in the Notice.

22. In addition thereto, the criteria for "special relief" set forth in the "Settlement Agreement" were illusory and disqualified virtually all potential class members from "special relief."

23. By reason of the foregoing, which includes the class representatives' failure to adequately protect the interests of the plaintiffs, each and every one of the plaintiffs has suffered damages in the form of a) the failure of the insurance purchased to perform in the manner in which its sale was illustrated; b) denial of special relief; c) forfeiture of basic relief, and d) the time and effort put in to completion of the claim forms and prosecution of claims and appeals seeking special relief.

WHEREFORE, plaintiffs pray for the following relief:

A. That plaintiffs be allowed to rescind their acceptance of participation in the Cozad class action and that they be allowed to pursue individual claims against AmerUs;

B. In the alternative to A, that plaintiffs be accorded "special relief" providing for enhancement of their life insurance and/or other benefits; and

C. That plaintiffs recover any and all other compensatory damages to which they are entitled; and

D. That plaintiffs be awarded punitive damages against the defendant in an amount sufficient to punish the defendant and to deter the defendant from engaging in similar conduct in the future; and

E. That plaintiffs recover any and all other relief to which they are entitled, as well as their costs, penalties, and attorneys' fees pursuant to 215 ILCS 5/155.

s/ Mark D. DeBofsky
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